TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 41

GEORGE F. STANDING, PLAINTIFF IN ERROR,

vs.

THE [illegible]

IN ERROR TO THE [illegible]

(18,978)

(18,978.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 61.

GEORGE F. HARDING, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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a Original.

UNITED STATES OF AMERICA, ss:

The President of the United States to the People of the State of Illi nois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C. within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Illinois wherein George F. Harding is plaintiff in error and The People of the State of Illinois are defendants in error, to show cause, if any there be, why the judgment against the said plaintiff in error in and by the said supreme court of Illinois, referred to in the said writ of error, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Benjamin D. Magruder, chief justice of the supreme court of Illinois, this first day of June A. D. 1903.

BENJAMIN D. MAGRUDER,
Chief Justice of the Supreme Court of Illinois.

Received a true copy of the above citation this first day of June, A. D. 1903.

ROBERT S. ILES,
ROBERT D. MARTIN,
STILLMAN B. JAMIESON,
Attorneys for the said Defendants in Error.

b In the Supreme Court of Illinois.

GEORGE F. HARDING
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } Appeal from Cook.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the second day of June in the year of our Lord one thousand nine hundred and three, a copy of the foregoing citation was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court, this third day of June, A. D. 1903.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

c UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Illinois before you, or some of you, between George F. Harding and The People of the State of Illinois, a manifest error hath happened, to the great damage of the said George F. Harding as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the first day of June, in the year of our Lord one thousand nine hundred and three.

{ The Seal of the Circuit Court of the United States for the South'n Dist. Ill. }

JAMES T. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

Allowed by

BENJAMIN D. MAGRUDER,
Chief Justice of the Supreme Court of Illinois.

d In the Supreme Court of Illinois.

GEORGE F. HARDING
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } Appeal from Cook.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the second day of June in the year of our Lord one thousand nine hundred and three, a copy of the foregoing writ of error for defendants in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court, this third day of June A. D. 1903.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

In the Supreme Court of Illinois.

GEORGE F. HARDING
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } Appeal from Cook.

I, Christopher Mamer, clerk of the supreme court of Illinois, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto do hereby certify that the following pages numbered from one (1) to one hundred and eighty-three, both inclusive contain a true, perfect and complete copy of the record and proceedings had in the above entitled cause in said court, including a certified copy of the opinion of the court, and that pages one hundred and eighty-four (184) to one hundred and ninety-five (195) contain a true and correct copy of the assignment of errors upon said record filed in said court on the second day of June, A. D. 1903, the original of which remain on file and of record in my said office.

In testimony whereof I have hereunto set my hand and caused the seal of the said supreme court of Illinois to be hereunto affixed at Springfield, Illinois, this third day of June, in the year of our Lord one thousand nine hundred and three.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

1 At a supreme court, begun and held at Springfield on Tuesday, the seventh day of October, in the year of our Lord one thousand nine hundred and two, within and for the State of Illinois.

Present: Benjamin D. Magruder, chief justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; John P. Hand, justice; James B. Ricks, justice; Howland J. Hamlin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that afterwards, to-wit: on the *the* eighth day of October, A. D. 1902, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the circuit court of Cook county wherein George F. Harding was appel-

lant and The People of the State of Illinois appellees, which said transcript of record is in the words and figures following, viz:

2 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
Cook County, }

Pleas before the Honorable Charles G. Neely, one of the judges of the circuit court of Cook county, at a term thereof begun and held in the court house, at Chicago, in said county and State, on the third Monday (being the 16th day) of June, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty sixth.

Present: Honorable Charles G. Neely one of the judges of the circuit court of Cook county, State of Illinois; Charles S. Deneen, State's attorney; Ernest J. Magerstadt, sheriff.

Attest: JOHN A. COOKE, *Clerk.*

Be it remembered that heretofore, to-wit; on the 11th day of March, A. D. 1901, a certain people's writ of summons issued out of the office of the clerk of said court and under the seal thereof directed to the sheriff of Cook county to execute which writ together with the return of the sheriff thereon endorsed are in words and figures following, to-wit:—

3 STATE OF ILLINOIS, } ss:
Cook County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon George F. Harding if he shall be found in your county, personally to be and appear before the circuit court of Cook county, on the first day of the next term thereof, to be holden at the court house, in Chicago, in said Cook county, on the third Monday of April A. D. 1901 to answer the People of the State of Illinois of a plea that he render to the said plaintiff twenty six hundred and ninety eight dollars and thirty eight cents which he owe- to and unjustly detain- from the People to the damage of the said plaintiff as is said in the sum of twenty six hundred ninety eight 38/100 dollars.

And have you the- and there this writ, with an endorsement hereon in what manner you shall have executed the same.

Witness, John A. Cooke, clerk of said court, and the seal
[SEAL.] thereof, at Chicago, in said county, this eleventh day of March, A. D. 1901.

JOHN A. COOKE, *Clerk.*

(3.) Copy G. D. No. 216038. Spears. Circuit court of Cook county. April term, A. D. 189– People *vs.* Harding. Summons in debt. Filed Apr. 16, 1901 John A. Cooke, clerk. Rec'd 5 o'clock p. m. Mar. 11, 1901 Ernest J. Magerstadt, sheriff. Robert S. Iles, attorney No fee, J. A. Cooke, cl'k The within named defendant not found in my county this 15th day of April, 1901. Ernest J. Magerstadt, sheriff by Henry Spears, deputy.

4 And afterwards, to-wit:—on the 14th day of June, A. D. 1901, a certain people's writ of alias summons issued out of this office of the clerk of said court and under the seal thereof directed to the sheriff of Cook county to execute which writ together with the return of the sheriff thereon endorsed are in words and figures following, to-wit:—

STATE OF ILLINOIS, } *ss:*
Cook County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We again command you that you summon George F. Harding if he shall be found in your county, personally to be and appear before the circuit court of Cook county, on the first day of the next term thereof, to be holden at the court house, in Chicago, in said Cook county, on the third Monday of July, A. D. 1901, to answer unto the People of the State of Illinois of a plea that he render to the said plaintiff twenty six hundred ninety eight dollars and thirty-eight cents which he owe- to and unjustly detain- from plaintiff to the damage of the said plaintiff as is said in the sum of twenty-six hundred ninety eight & 38/100 dollars.

And have you then and there this writ, with an endorsement hereon in what manner you shall have executed the same.

Witness, John A. Cooke, clerk of said court, and the seal [SEAL.] thereof, at Chicago, in said county, this 14th day of June, A. D. 1901.

JOHN A. COOKE, *Clerk.*

5 (4.) Copy. G. D. No. 216038–15433. Spears. Circuit court of Cook county. July term, A. D. 189– People *vs.* Harding. Summons in debt. Pl's iss. Filed July 23, 1901. John A. Cooke, clerk. Robert S. Isles, attorney. Rec'd — o'clock — m. Jun- 14, 1901 Ernest J. Magerstadt, sheriff. The within named defendant not found in my county, this 15th day of July, A. D. 1901. Ernest J. Magerstadt, sheriff, by O. B. Knight, deputy.

6 And afterwards, to-wit:—on the 27th day of September, A. D. 1901, a certain people's writ — plurius *of* summons, issued out of the office of the clerk of said court and under the seal thereof

directed to the sheriff of Cook county to execute which writ together with the return of the sheriff thereon endorsed are in words and figures following, to-wit:—

STATE OF ILLINOIS, } ss:
Cook County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We again command you that you summon Geo. F. Harding if he shall be found in your county, personally to be and appear before the circuit court of Cook county, on the first day of the next term thereof, to be holden at the court house, in Chicago, in said Cook county, on the third Monday of October, A. D. 1901 to answer unto the People of the State of Illinois of a plea that he render to the said plaintiff twenty-six hundred ninety eight dollars and thirty-eight cents which he owe- to and unjustly detains from plaintiff to the damage of the said plaintiff as is said in the sum of twenty-six hundred ninety eight and 38/100 dollars.

And have you then and there this writ, with an endorsement hereon in what manner you shall have executed the same.

Witness, John A. Cooke. clerk of said court, and the seal [SEAL.] thereof, at Chicago, in said county, this 27th day of September, A. D. 1901.

JOHN A. COOKE, *Clerk.*

7 (5.) Copy. G. D. No. 216038. Circuit court of Cook county. October term, A. D. 189– People *vs.* Harding Summons in debt. Pl's filed Oct. 4, 1901. John A. Cooke, clerk. Robert S. Iles, attorney. Rec'd 3.50 o'clock p. m. Sep. 27, 1901. Ernest J. Magerstadt. Costs suspended, J. A. Cooke, clerk.

I hereby appoint Wm. M. Klein my special deputy to serve the within writ this 27th day of Sept. A. D. 1901,

ERNEST J. MAGERSTADT, *Sheriff.*

Served this writ on the within named defendant, Geo. F. Harding by reading the same to him this 28th day of September, 1901.

ERNEST J. MAGERSTADT, *Sheriff,*
By WILLIAM M. KLEIN, *Deputy.*

Subscribed and sworn to before me this 2nd day of October, A. D. 1901.

EDWIN H. SMITH,
[SEAL.] *Notary Public, Cook County, Ills.*

8 STATE OF ILLINOIS, } ss:
County of Cook, }

Wm. M. Klein being duly sworn, deposes and says he is the identical person mentioned in the above appointment and the above return is true.

WILLIAM M. KLEIN.

Be it remembered that heretofore, to-wit, on the 11th day of March, A. D. 1901, a certain præcipe was filed in the office of the clerk of said court, in words and figures following, to-wit:—

STATE OF ILLINOIS, } ss:
County of Cook, }

Circuit Court of Cook County, April Term A. D. 1901.

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,
vs.
GEORGE F. HARDING, Defendant. } Debt. Damages, $2,698.38.

The clerk of said court will issue a summons in the above entitled cause to said defendant in a plea of debt to the damage of said plaintiff in the sum of twenty-six hundred ninety-eight 38/100 dollars, direct the same to the sheriff of Cook county to execute and make it returnable to the April term of said court, A. D. 1901.

ROBERT S. ILES,
Plaintiff's Attorney.

To John A. Cooke, Esq., clerk.
Chicago, March 11, 1901.

9 Copy. G. D. No. 216038. Circuit court of Cook county, People of the State of Illinois, *vs.* George F. Harding. No fee. Præcipe. Filed Mar. 11, 1901. John A. Cooke, clerk. Robert S. Iles, plaintiff's attorney.

And therefore on the same day, to-wit, on the 11th day of March, A. D. 1901, a certain declaration was filed in the office of the clerk of said court, in words and figures following to-wit:—

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of Cook County.

PEOPLE OF THE STATE OF ILLINOIS }
vs. } Debt.
GEORGE F. HARDING. }

The People of the State of Illinois, plaintiff, upon order of the county board of Cook county, by Robert S. Iles its attorney, com-
plain- of George F. Harding, defendant of a plea that he render the plaintiff the sum of twenty-six hundred ninety-eight and
10 38/100 dollars ($2698.38) which he owes and unjustly detains from the plaintiff, for that heretofore, to-wit, on the 15th day of January, A. D. 1901, — was and still is indebted to the plaintiff in the sum of twenty-six hundred ninety-eight and 38/100 dollars ($2698.38) for and on account of divers amounts of taxes, interest, penalties and costs due and unpaid against divers tracts, pieces, parcels and lots of land of the defendant, situated in said county, and before that day forfeited to the State of Illinois for the nonpayment of the said taxes, interests, penalties and costs; which *the* said real property together with the amount for which the same was forfeited as aforesaid, is as follows, to-wit:—

The defendant was on the 1st day of May, A. D. 1897, and on the 1st day of May, A. D. 1898 and on the 1st day of May and of April A. D. 1899, and on the 1st day of April and of May, A. D. 1900, the owner of the following tracts of land and real property, situated in said county of Cook, Illinois, to-wit:—Lots eleven in block seventy-eight (78) in Elston's addition to Chicago.

And that in and for each of the said years of A. D. 1897, 1898, 1899 and 1900, general taxes for State, county, municipal and other lawful purposes were assessed and levied upon the said above lands and real property, and against the said defendant as the owner of said lands and real property, all of which is shown upon the collector's books of the town of North Chicago, in said Cook county, in and for the several years, and upon the tax, judgment, sale redemption and forfeiture record of said county, reference to which is hereby made.

And that the said taxes, assessed and levied as aforesaid, in and for each of said several years of A. D. 1897, 1898, 1899 and
11 1900 and the penalties, interests and costs which have accrued upon the said land and real property and against the said defendant, remain and are due and unpaid, and the said defendant has neglected and refused to pay the same, and that by reason of the defendant's said neglect to pay said taxes, penalties. interests and costs when the same were due, the said land and real estate were and became successively duly forfeited to the State of

Illinois for the nonpayment of the said taxes as aforesaid, and so remain and have continued from that time hitherto, and are now forfeited to the State of Illinois for the taxes of two or more years, to-wit, the taxes of the years A. D. 1897, 1898 and 1899, and that the said total amount of said taxes, penalties, interests and costs due and unpaid upon the said land, lot and real property above described in the sum of twenty-six hundred ninety-eight and 38/100 dollars ($2698.38).

And the plaintiff avers that the defendant on, to-wit the first day of May, A. D. 1897 and also on the first day of April and of May, A. D. 1898, 1899, and 1900, was and still is the owner and possessor of the said land, lots and real property against which the said delinquent taxes are charged.

Wherefore, and by force of the statute in such case made and provided, an action hath accrued to the plaintiff to have and demand of and from the defendant the said several amounts of money, the same being the aggregate sum of twenty-six hundred ninety-eight and 38/100 dollars ($2698.38) first above mentioned, yet the defendant, though requested, hath not paid the said several sums of money or any or either of them, or any part thereof, but fails and refuses so to do to the damage of the plaintiff of twenty-six hundred ninety eight and 38/100 dollars ($2698.38), wherefore the plaintiff brings this suit, etc.,

THE PEOPLE OF THE STATE OF ILLINOIS,
By ROBERT S. ILES, *Attorney for Plaintiff.*

ROBERT S. ILES,
R. D. MARTIN,
STILLMAN B. JAMIESON,
Attorneys for Plaintiff.

12 (2.) Gen. No. 216038. Circuit court Cook county. People of the State of Illinois. *vs.* George F. Harding. No fee Def't-declaration. Filed Mar. 11, 1901. John A. Cooke, clerk. R. S. Iles.

13 And afterwards, to-wit, on the 22nd day of October, A. D. 1901, a certain appearance and demurrer was filed in the office of the clerk of said court, in words and figures following to-wit:—

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court Thereof, October Term, A. D. 1901.

PEOPLE OF THE STATE OF ILLINOIS } Debt. General Number
vs. } 216,038.
GEORGE F. HARDING. }

Now comes the defendant above named and enters his special appearance herein, for the purpose of objecting to the jurisdiction of the court and under such special appearance moves the court to dismiss this suit for want of jurisdiction of the subject matter and of the person of defendant and particularly for lack of authority in said alleged attorneys of the plaintiff to bring such suit.

And without waiving the above objections or motion, or any part thereof, the defendant demurrs to the said declaration as wholly insufficient in law. And for special causes of demurrer thereto the defendant assigns the following:—

(1.) The said declaration fails to show the authority of said alleged attorneys for bringing the said suit.

(2.) Said declaration fails to set forth in detail the taxes assessed or levied against the said lots described in said declaration, severally, for each of the said years mentioned therein.

(3.) Said declaration fails to set forth in detail amount of taxes, penalties, interest and costs accrued against the said lots, severally, for which the same were forfeited, or claimed to be, to the State of Illinois for said several years.

14 (4.) Said declaration improperly joins alleged assessments and alleged forfeitures for more than one year against the real estate described in said declaration.

(5.) Said declaration improperly joins in one suit and in one count, the several distinct pieces of real estate mentioned therein, and improperly joins the proceedings of several distinct years in relation to the said lots.

(6.) Said declaration fails to set forth the facts in relation to the proceedings against said lots, resulting in the alleged forfeiture thereof, and fails to set forth the facts showing the regularity or validity of said alleged forfeitures.

(7.) Said declaration improperly joins alleged rights of action accruing under the former revenue law of Illinois, with the alleged rights of action accruing under the present law of said State.

(8.) Said declaration fails to show in detail the assessment against the said property for the said years mentioned in said declaration severally.

(9.) It appears on the face of said declaration that the said several rights of action, so far as they ever existed at all, were barred by the statute of limitations, applicable in such case.

(10.) The said declaration fails to set forth the showing of alleged collector's book in relation to the said property, referred to in said declaration.

(11.) Said declaration fails to set forth in detail the taxes, penalties and costs against said real estate for which it is claimed the same were forfeited in said several years.

(12.) The said declaration is otherwise irregular, informal and wholly insufficient.

15 Wherefore the defendant prays to be hence dismissed with his reasonable costs and charges in this behalf wrongfully sustained.

WM. J. AMMEN,
Att'y for Def't.

(6.) Gen. No. 216038. Circuit court Cook county People *vs.* Harding. Appearance and demurrer of defendant. Copy Filed Oct. 22, 1901. John A. Cooke, clerk. Wm. J. Ammen att'y for def't.

And afterwards, to-wit, on the 20th day of December A. D. 1901, a certain plea was filed in the office of the clerk of said court, in words and figures following, to-wit:—

16 STATE OF ILLINOIS, } ss.:
County of Cook. }

In the Circuit Court Thereof.

PEOPLE OF THE STATE OF ILLINOIS } Debt. Term Number.
vs.
GEORGE F. HARDING. }

And the defendant, George F. Harding, by William J. Ammen, his attorney, comes and defends the wrong and injury, when, etc., and says that he does not owe the said sum or sums of money above demanded, or any part thereof, in manner and form as the plaintiff has above complained against him; and of this the defendant puts himself upon the count-y, etc.

WM. J. AMMEN,
Attorney for Defendant.

Notice of Defenses under General Issue.

The plaintiff is hereby notified that under the plea of general issue in the above entitled cause, the defendant will rely also on the following matters of defense.

I. That the statute of Illinois on which this suit is brought is contrary to the constitution of Illinois and contrary to the Constitu-

tion of the United States and is a taking of property without due process of law.

II. That defendant did not own the real estate described in the declaration as alleged therein.

17 III. That there was no valid forfeiture of said real estate as alleged in said declaration.

IV. That there was in the several years mentioned in the said declaration a judgment for the taxes against said real estate, accruing each year; and that by the taking of subsequent judgment the former judgments became merged; and that by reason of such judgments the plaintiff is barred from this present action.

V. That the attorneys bringing this suit in behalf of the plaintiff have no authority to bring or prosecute the same.

VI. That whatever contract there may be with the said attorneys for the bringing of the said suit, and whatever authority they may have, is fraudulent and void by reason of its being such a contract, as is not permitted by the law to be made.

WM. J. AMMEN,
Att'y for Defendant.

(7.) Gen. No. 216038. Circuit court Cook county. People *vs.* Geo. F. Harding. Plea and notice of defenses under general issue. Filed Dec. 20, 1901. John A. Cooke, clerk. Copy. Wm. J. Ammen, att'y for def't.

18 And afterwards, to wit, on the 23rd day of December, A. D. 1901, a certain similiter was filed in the office of the clerk of said court, in words and figures following, to-wit:—

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of Cook County.

PEOPLE OF THE STATE OF ILLINOIS } Gen. No. 216,038, Term No.
vs. } 15433.
GEORGE F. HARDING. }

And the said, The People of the State of Illinois plaintiff in the above entitled action, as to the plea of the defendant pleaded therein, and whereof he doth put himself upon the country, doth the like.

ROBERT S. ILES,
ROBERT D. MARTIN,
STILLMAN B. JAMESON,
Attorneys for Plaintiff.

(8.) Gen. No. 216038. Term No. 15433. Circuit court Cook county. People *vs.* Harding. Similiter. Filed Dec. 23, 1901. John A. Cooke, clerk. Copy.

19 And afterwards, to-wit, on the 7th day of July, A. D. 1902, the following proceedings were had and entered of record in said court to-wit:—

PEOPLE OF THE STATE OF ILLINOIS
vs.
GEORGE F. HARDING. } 216,038. Debt.

This cause being called for trial come the parties by their attorneys respectively.

And thereupon on the agreement of said parties now here made in open court this cause is submitted to the court for trial without a jury and the court now here after hearing all the evidence adduced, and being fully advised in the premises, finds the issues for the plaintiff, finds the debt to be the sum of twenty-one hundred and twenty-three dollars and five cents and assesses the plaintiff damages to the sum of twenty-one hundred and twenty-three dollars and five cents.

Whereupon the defendant enters herein his motion for a new trial in said cause after arguments of counsel and due deliberation by the court said motion is overruled and a new trial denied.

Therefore it is considered by the court that the plaintiff do have and recover of and from the defendant, George F. Harding, their said debt of twenty-one hundred and twenty-three dollars and five cents and their said damages of twenty-one hundred and twenty-three dollars and five cents in form as aforesaid by the court found due and assessed together with their costs and charges in this behalf expended and have execution therefor.

20 It is ordered that upon payment of said damages with interest thereon and costs of suit said debt be discharged. Thereupon the defendant having entered his exceptions herein prays an appeal from the judgment of this court to the supreme court in and for the State of Illinois, which is allowed upon filing herein his appeal bond in the penal sum of three thousand dollars to be approved by the court within twenty days from this date and sixty days from this date is hereby allowed the defendant in which to file his bill of exceptions herein.

(16.) Gen. No. 216038. Circuit court Cook county. People *vs.* Harding. Judgment entered, July 7, 1902.

Be it remembered that heretofore, to-wit, on the 5th day of December, A. D. 1901, the following proceedings were had and entered of record in said court to-wit:—

21 PEOPLE OF THE STATE OF ILLINOIS *ex Rel.*, etc., *vs.* GEORGE F. HARDING. } Debt. 216,038.

This cause coming on to be heard upon the demurrer to the declaration filed in said cause after arguments of counsel and due deliberation by the court said demurrer is overruled and it is ordered that the defendant be and is hereby required to plead to said declaration within fifteen days from this date.

(14.) Gen. No. 216038. Circuit court Cook county. People *vs.* Harding. Order entered Dec. 5, 1901. Copy.

22 And afterwards, to-wit, on the 28th day of May, A. D. 1902, the following proceedings — had and entered of record in said court, to-wit:—

PEOPLE OF THE STATE OF ILLINOIS *vs.* GEORGE F. HARDING. } 216,038. Debt.

This cause being called for trial come the parties to this suit by their attorneys respectively and thereupon on the agreement of said parties now here made in open court this cause is submitted to the court for trial without a jury.

(15.) Gen. No. 216038. Circuit court Cook county. People *vs.* Harding. Order entered May 28, 1902, Copy.

23 And afterwards, to-wit, on the 13th day of August, A. D. 1902, the following proceedings were had and entered of record in said court, to-wit:

PEOPLE OF THE STATE OF ILLINOIS *vs.* GEORGE F. HARDING. } 216,038. Debt.

On the stipulation of the parties to this suit filed herein, it is ordered that the time to present and file the bill of exceptions herein be and the same is hereby extended to September 22nd, A. D. 1902.

(17.) Gen. No. 216038. Circuit court Cook county. People *vs.* Harding. Order entered, Aug. 13th, 1902. Copy.

24 And afterwards, to-wit, on the 20th day of September. A. D. 1902, the following proceedings were had and entered of record in said court, to-wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court Thereof.

THE PEOPLE OF THE STATE OF ILLINOIS } Gen. No. 216,038, Term
vs. } No. 15433. Debt.
GEORGE F. HARDING. }

It is hereby ordered upon stipulation between the parties in the above entitled cause that the time for presenting and filing the bill of exceptions, in said cause be and it hereby is extended to and including September 24th, 1902.

(18.) Gen. No. 216038. Circuit court Cook county. People *vs.* Harding. Order entered Sept. 20/02, extending time for bill of exceptions. Copy.

25 Filed Sep. 24, 1902. John A. Cooke, Clerk.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

PEOPLE OF THE STATE OF ILLINOIS } Gen'l No. 216,038, Term No.
vs. } 15433. In Debt.
GEORGE F. HARDING. }

Bill of Exceptions.

Be it remembered that heretofore, to-wit, on the 28th day of May, A. D. 1902, the same being one of the judicial days of the May term of said court, this cause came on for trial before the Honorable Charles G. Neely, one of the judges of said court, in the room usually occupied by him as a court room in the court house in said county and State, without a jury, a jury being waived by agreement of the parties, whereupon the following testimony was offered and proceedings had in due form of law.

Appearances: Mr. Robert S. Iles, Mr. R. D. Martin, and Mr. Stillman B. Jamieson, appearing on behalf of complainant. Mr. William J. Ammen, appearing on behalf of defendant.

Mr. MARTIN: May it please the court, I first offer in evidence a certified copy of the collector's warrants, tax collector's warrants, county of Cook, and State of Illinois, for the years 1897, 1898, 1899 and 1900, attached together, as far as the same affects the property in question, situated in the town of North Chicago, in the county of Cook and State of Illinois.

Mr. AMMEN: If the court please, I desire to note now a general objection to this evidence. I am not familiar enough with each of the steps so I would like to compare this with the provisions of the statute—but, for whatever it may be worth, I now note the
26 general objection that the warrants are insufficient.

The COURT: Very well, I will overrule the objection.

To which ruling of the court, defendant by his counsel then and there duly excepted.

Whereupon said paper was marked Plaintiff's Exhibit "1" by the reporter, and the same is hereinafter shown as a part of this bill of exceptions.

Mr. MARTIN: I next offer in evidence a certified copy of the judgment roll known as the tax judgment sale redemption and forfeiture record for said county and city taxes for 1899, and prior years as entered in the county of Cook and State of Illinois, in the year 1900 for the taxes of 1899.

Mr. AMMEN: What is that, the delinquent judgment?

Mr. MARTIN: Yes.

Mr. AMMEN: This is just after——

Mr. MARTIN: That is entered in the year 1900 for 1899 and prior years.

Mr. AMMEN: What is the date of this judgment roll, what date in 1900?

Mr. MARTIN: This is the judgment roll passed by order of the court.

Mr. AMMEN: Dated the 6th of August.

Whereupon said paper was marked by the reporter Plaintiff's Exhibit "2," and the same is hereinafter shown as a part of the bill of exceptions.

Mr. AMMEN: I will make the same objection to this, I may be able later to point out a more specific objection—I note particularly here the confusion of parts—apparently parts of different records without any one of them being complete.

Mr. MARTIN: What do you mean?

Mr. AMMEN: Well, there seems to be a part of the judgment of the county court, not all of it; a part of the clerk or
27 collector's certificate of delinquent property, not all of it.

Mr. ILES: There is only that set out in the certificate showing that it is the judgment roll as far as it relates to this property, that is the only thing that could be brought in here, otherwise we would have one hundred and ninety volumes.

The COURT: Well, they won't have to set out anything, except that which refers to this property in question, otherwise they would have to set out all of the records.

Mr. AMMEN: I don't think they would have to set out anything except the part relating to this property.

The COURT: I was going to ask you if the certificate says it relates to all the land in evidence; if it does, I should think it was sufficient.

Mr. AMMEN: This paper seems to be the judgment sale redemption and forfeiture record of said county and city for the taxes of 1899 and prior years in as far as the same relates to the property described in the foregoing copy.

Mr. MARTIN: That is the record required to be kept by statute.

The COURT: I will over-rule the objection.

To which ruling of the court, defendant by his counsel then and there duly excepted.

Mr. MARTIN: I wish to call the attention of the court to the description of the property here in said Exhibit 2 under the head of "Elston's addition to Chicago," we have "Owner's name," "G. F. Hardin;" "Lot," "11," "Block," "78," "Valuation as assessed by the State board of equalization," "$1791.00," on this the different taxes are set out and the total amount of judgment, "$1728.38." Under the head of "Sale" which is provided by statute, we have the words "October 13th, 1900. Forfeited to the State of Illinois,"
which means the forfeiture record required to be kept, noting
28 the act of forfeiture; this forfeiture of $1728.38 is carried forward from the collector's warrant for the year 1900, with 25 per cent. added as required by statute. That is the taxes of 1899 and then that is carried on the collector's warrant for the year 1900 and we have the total amount of the forfeiture as carried forward with 25 per cent. penalty, $1998.25, that added to the current taxes for the year 1900 makes $2,123.05, and then we have the word "forfeited" after that in the collector's warrant for the year 1900; now we have not got the collector's warrant for the year 1901 and we let it stand on the collector's warrant for the year 1900, as the amount we claim due to the People of the State of Illinois, $2,123.05.

Mr. AMMEN: What is the date of that paper?

Mr. MARTIN: October 4th, 1901—this is the amount that was due on the 1st of December, 1900.

Mr. AMMEN: With the penalty?

Mr. MARTIN: Up to December 1st, 1900.

Mr. AMMEN: You don't declare on this forfeiture?

Mr. ILES: The forfeiture for 1900 would occur in 1901, consequently this notation here of "October 4th, 1901," and the word "forfeited" is the notation that was made the year after these taxes accrued and became due, and this is the amount extended on the collector's warrant for the year 1900.

Mr. AMMEN: Mr. Martin said that all of that was reached——

Mr. ILES: Well, it is reached by the forfeiture of the previous year being added to the current taxes of 1900, all of which accrued prior to the beginning of this suit.

Mr. AMMEN: What is the date of the prior forfeiture?

Mr. MARTIN: October 13, 1900.

Mr. AMMEN: You do not claim any taxes subsequent to the year 1899?

Mr. MARTIN: Well, there is the taxes of 1900.

Mr. AMMEN: Is 1900 included there?

Mr. MARTIN: Yes.

29 HERMAN WARNER, a witness called on behalf of the plaintiff, having first been duly sworn, testified on oath as follows:

Direct examination.

By Mr. MARTIN:

Q. What is your full name
A. Herman Warner.
Q. Are you a clerk in the county clerk's office of the State of Illinois?
A. County clerk's office, yes sir.
Q. What is the book you have here (indicating)?
A. That is known as the North Chicago assessor's roll for the year 1899.
Q. Where is lot eleven of block 78?
A. Lot eleven of block 78 is here (indicating).

Mr. MARTIN: We wish to introduce in evidence the original assessment roll of the town of North Chicago as far as it affects the property, in evidence, and I will read that item to the reporter here as follows: Under the head of "Owner's name as listed by the county clerk," "George F. Harding," "Lot." "38," "Block," "78;" under the head of "Fair cash value of unimproved lots and blocks," "$1620.00;" under the head "Total fair cash value," "$1620.00."

Mr. AMMEN: You might identify those pages so we can refer to them later.

Mr. MARTIN: As found on page 72, running clear across the two pages—we offer that in evidence as read by me.

Mr. AMMEN: That is for 1898.

Mr. MARTIN: 1898, yes, sir.

Mr. AMMEN: These are the original assessments.

A. The original assessments of lot 11, block 78.

Mr. MARTIN: We offer in evidence the original assessment roll of the town of North Chicago, county of Cook and State of Il-
30 linois for the year 1897 as far as it affects the property described in the declaration, and I will read the items as follows: Under the head of "Owner's names as listed by the county clerk," "George F. Harding;" under "Lot," "11," under "Block," "78," under the head "Fair cash value of unimproved lots and blocks," "$2280.00;" under the head "Total fair cash value," "$2280.00; under the general head of "Elston's addition to Chicago."

We offer in evidence the original assessment roll of the town of North Chicago, county of Cook and State of Illinois for the years 1899 and 1900, as far as it affects the property described in the declaration, and I will read the items to the court;

Under the description "Elston's addition to Chicago—" under "Lot," "11," under "Block," "78;" under "Year," "1899;" "Full value of unimproved lots," $9425.00;" under "Assessed value of unimproved lots," "$1885 00;" under "Total assessed value of

board of assessors," "1885.00;" under "Total assessed value as corrected by the board of review," "$1885.00."

The COURT: That is in 1885.

Mr. MARTIN: It is dollars—it is $1885.00.

Under the year "1900" clear across the page is the same description; under "Full value of unimproved lots," "$7540.00," under "Assessed value of unimproved lots," "$1508.00;" under "Total assessed value of board of assessors," "$1508.00;" under "Total assessed value as corrected by the board of review;" "$1282.00;" under "Owner's" names as listed by the county clerk," "George F. Harding."

I believe that is all we care to introduce at this time—that is the *prima facie* case, your honor.

Mr. AMMEN: I desire first to move to exclude the evidence of the plaintiff, first, because there is no proof of authority to bring
31 this suit. The statute provides that this suit may be brought and prosecuted—brought by order of the county board. The declaration avers the order, but there is no proof of it, or attempted proof of it. They are bound to prove it for two reasons, as I understand it, first, because they allege it this being an action of law and not in chancery, and second, because they are bound to show it as part of their case, and that is certainly their theory, or they would not have alleged it in their declaration.

The second ground of the motion is that they do not show that this property was ever offered for sale, and was forfeited for want of bidders.

The prerequisite of the forfeiture is, first, the steps they have tried to show towards a judgment—a delinquent judgment, etc., and then they must show an offer for sale and a failure to sell for want of bidders, and a forfeiture. Those are the prerequisites on that proposition, and we have the authorities if the court desires to see them, that a valid forfeiture can only exist upon failure of bidders at an offer of sale. I think that is all, failure to prove authority to prosecute the suit and a failure to show an offer of sale and forfeiture on that account.

The COURT: I will overrule the motion to exclude the testimony on the ground stated.

To which ruling of the court, the defendant by his counsel then and there duly excepted.

Plaintiff rests.

Whereupon the defendant introduced the following evidence.

32 Mr. AMMEN: I offer in evidence for the defendant, first a certified copy of a deed from the county clerk to John N. Young, second, a certified copy of a deed from the county clerk to Hiram Coombs.

The said copies of tax deeds are hereinafter shown as a part of this bill of exceptions.

Mr. ILES: We object to the introduction of these tax deeds in evidence, unless the validity of the deeds be established.

Mr. AMMEN: If that is your claim, what else would be offered?

Mr. ILES: Well, the mere introduction of the tax deed in order to evade liability as an owner under this proceeding, is not sufficient evidence to satisfy that—it is not evidence without the production of the necessary evidence to establish the validity of that tax deed. They must show a proper and lawful precept and all of the essential steps to the making of a valid deed. The mere production of the tax deed is not evidence of ownership.

Mr. AMMEN: Mr. Iles, you do not require me to prove that the plaintiff has not the possession of the originals of these.

Mr. ILES: No, the certified copies will do.

The COURT: I think it is the rule that the mere production of a tax deed where they are trying to evade is not sufficient proof, but that the steps that led up to the natural and proper issuance of the deed must be submitted. In other words, a tax deed might issue without the proper steps being taken.

Mr. AMMEN: That applies then to both of these deeds.

The COURT: I will give you time to look it up.

Mr. AMMEN: We will consider the question—we will ask time of the court to find what we want.

The COURT: I will sustain the objection at present.

To which ruling of the court, defendant by his counsel then and there duly excepted.

33 Mr. AMMEN: Now, I offer a certified copy of a deed made by George F. Harding to the Chicago Real Estate Loan & Trust Company under date of June 10th, 1896, acknowledged July 1st, 1896, recorded in the office of the recorder of this county July 2nd, 1896,—this is the certified copy by the recorder conveying as follows: This indenture witnesseth: That the grantor, George F. Harding, * * * conveys &c. all interest in the following described real estate, to-wit: "Any and all land of every kind and description claimed or owned by me in the State of Illinois, and all lots and lands of every description in the city of Chicago, in which I have any right, title or interest whatsoever, situated in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws in this State," dated the 10th day of June, 1896. It is a deed of all real estate in Cook county; now, I want to follow that with proof if need be that there has been no title passed back to the defendant since the date of this deed.

Mr. ILES: Well, we object to the introduction of this deed, document No. 2411336, and for objection say, first, that it is too general and does not apply to any specific property, and is not notice to the world or to the taxing officers of Cook county—that it would be impossible to index it as against any piece of property whatever, and therefore is not notice. Secondly, that it is made to a corporation whose place of business, officers and character of its business are not disclosed by the deed and are unknown; that there is no proof

of its acceptance or of any consideration, and for the last reason we object until the competency—the identity of this corporation be established, its location, the names of its officers and its competency to receive a deed and the benefits of the transaction, the consideration of the deed and the acceptance upon——

Mr. AMMEN: Let me ask Mr. Iles, do you insist upon proof that the defendant has not the original or control of the original deed?

34 Mr. ILES: I do not raise any question about the original, simply upon the substance of the deed itself.

The COURT: Gentlemen, on that question I am going to reserve my decision.

Mr. AMMEN: I have authorities here.

The COURT: I am going to reserve it at present.

Mr. AMMEN: Then will the deed be admitted subject to objection?

The COURT: Yes—no, I think I will not admit it, but will hold my decision.

Mr. ILES: Your honor, this is an objection founded upon the very foundation of our statute—of our law, if that corporation is not authorized and not competent to hold real estate, it cannot receive it or hold it—it has no existence in the law in the transfer.

The COURT: I will reserve the decision, but will not admit it or exclude it,—simply reserve the desision.

Mr. AMMEN: Then there will be a ruling so there can be a formal objection made later.

The COURT: Yes, I will take a little time to look at that point.

Mr. AMMEN: Now we will submit authorities on those questions —I have them as to the deed being too general—I have got an abundance of authorities and they are absolutely uniform.

The COURT: I will examine the point before I rule on it, and if I am in doubt will give you a chance to submit authorities.

Mr. AMMEN: I think I had better conclude the proof as if the deed were admitted.

The COURT: Yes, you can go ahead.

Mr. ILES: There is another objection, there is no evidence here of delivery to anyone.

Mr. AMMEN: The record of the deed is *prima facie* proof of delivery and acceptance.

The COURT: I want to examine and look over the decision and then I will hear you on that.

35 Mr. AMMEN: Now if your honor should hold upon one point that it is inadmissible, which we might cure, of course, we would like to put in further evidence upon that point.

The COURT: I say I will hear you, give you a chance.

Mr. AMMEN: And that if it is upon some point, we may be able to cure by further evidence, we may be permitted to do that?

The COURT: Yes.

Mr. AMMEN: Of course, if it is to some fundamental point, then it is a different question.

The COURT: Yes, if what he says is true, it is an incurable defect. I don't know whether his position is right or not, I want time to think it over.

Said certified copy of deed was thereupon marked Defendant's Exhibit 1, for identification, and the same is hereinafter shown as a part of this bill of exceptions.

GEORGE F. HARDING, the defendant in the above entitled cause, having first been duly sworn, testified on oath in his own behalf as follows:

Direct examination.

By Mr. AMMEN:

Q. Your name is George F. Harding?

A. Yes, sir.

Q. You are the defendant in this suit.

A. I am.

Q. You are the grantor in this deed of which a certified copy was last offered in evidence?

A. Yes, sir.

36 Q. Have you received from the Chicago Real Estate Loan and Trust Company or other party, any conveyance of any right, title, interest, or claim, or demand in or to any part of this lot described in this deed—no, I mean, described in the declaration—the lot described in the declaration, since the date of this deed, to the Chicago Real Estate Loan and Trust Company?

Mr. ILES: I object to that.

The COURT: Objection sustained.

(To which ruling the defendant then and there duly excepted.)

Mr. AMMEN: Now, I think to comply with the rule, I ought to say what I offer to prove in answer to the question.

The COURT: You may do that.

Mr. AMMEN: I offer to prove in answer to this question, that the witness, George F. Harding, has never received any conveyance of any right, title, interest, claim or demand in law or in equity of any kind in or to this lot since the date of that conveyance to the Chicago Real Estate Loan and Trust Company.

Mr. ILES: That is objected to on the same ground.

The COURT: Objection sustained.

(To which ruling of the court defendant, by his counsel, then and there duly excepted.)

Mr. AMMEN:

Q. Have you ever acquired or received any interest in or to this

let or any part of it by conveyance or otherwise since the date of that conveyance?

A. No.

Mr. ILES: That is objected to on the same ground.

The COURT: Let the question be stricken out. I will sustain the objection. It is the same question.

(To which ruling and action of the court the defendant then and there excepted.)

37 Mr. AMMEN: The court understands now what the witness will testify to, namely, that he has not?

The COURT: Yes.

Mr. AMMEN: And I offer to make that proof by him in answer to that question.

Mr. ILES: Now, if you establish that deed, isn't it true that if that deed was established it would be valid until we rebut it?

Mr. AMMEN: That is the trouble, and I think your honor misunderstands that—that is the trouble; they have already rebutted it by these assessments in the name of Mr. Harding, which are subsequent to the deed, all of them.

The COURT: No, I do not misunderstand it. If I admitted that deed, overruled his objection and admitted the deed, then it would show it was in the name of the grantee, and not this defendant, until the contrary appeared by some competent testimony. I can see how you might by a circuitous reasoning arrive at a different theory, but I am not going to do that.

Mr. AMMEN: I don't understand you.

The COURT: I say I see how a circuitous reasoning might bring us to such a theory as that, but I am not going to do that. You have offered the deed, if the deed was admitted, then we would have to say the title was in the grantee in that deed until the contrary appeared.

Mr. AMMEN: They have already proved the contrary.

The COURT: No, they have made a *prima facie* case, and even if they had, and I had admitted this deed, the same fact would still remain.

Mr. AMMEN: Then the testimony is rejected or refused upon your honor's ruling, that this deed would show the title as far as
38 the proof is now completed in the Chicago Real Estate Loan and Trust Company.

The COURT: Yes.

(And to the said refusal to admit said offered testimony the defendant then and there duly excepted.)

Mr. AMMEN:

Q. Mr. Harding, have you been or become the owner of this lot, or of any interest therein or thereto, at any time since the execution of this deed or since its date?

The COURT: That is the same question.

Mr. AMMEN: I offer to prove that he has not, by this witness, in answer to said question.

The COURT: By asking him if he had been the owner of this property, is the same question, the question of whether he was the owner or not, could not be shown by him anyway. I will sustain the objection.

Mr. AMMEN: Well, I offer to show that he has not had or acquired any interest in it.

The COURT: Yes. I sustain the objection and do not admit the offered testimony.

(To which ruling and action of the court the defendant, by his counsel, then and there duly excepted.)

Mr. AMMEN: I will ask this one further question so as to put it beyond question.

Q. Have you had or acquired any interest in or to this lot, by conveyance or otherwise, since this conveyance to the Chicago Real Estate, Loan and Trust Company, or since its date?

Mr. ILES: I object to that.

The COURT: Objection sustained.

Mr. AMMEN: I offer to prove by him that he has not.

39 The COURT: Objection sustained.

(To which rulings of the court and each of them defendant, by his counsel, then and there duly excepted.)

Mr. AMMEN:

Q. Did you own or have any interest in or to this property on the 1st of April, 1897, or the 1st of May, 1897?

Mr. ILES: That is objected to.

The COURT: Objection sustained.

Mr. AMMEN: The same offer as to the answer.

The COURT: Yes.

(To which ruling of the court, defendant, by his counsel, then and there duly excepted.)

Mr. AMMEN:

Q. Did you own or have any interest in or to this property on the 1st of April, 1898, or the 1st of May, 1898?

Mr. ILES: That is objected to on the same ground.

The COURT: Objection sustained.

Mr. AMMEN: The same offer.

The COURT: Yes.

(To which ruling of the court, defendant, by his counsel, then and there duly excepted.)

Mr. AMMEN: Or on the 1st of April, 1899, or the 1st of May, 1899?

Mr. ILES: That is objected to on the same ground.

The COURT: Objection sustained.

Mr. AMMEN: The same offer.
The COURT: Yes.
(To which ruling of the court, defendant by his counsel, then and there duly excepted.)

Mr. AMMEN:

Q. Or on the 1st day of April, 1900, or the 1st of May, 1900?

Mr. ILES: That is objected to.
The COURT: Objection sustained.
Mr. AMMEN: The same offer.
The COURT: Yes.
(To which ruling of the court, defendant by his counsel, then and there duly excepted.)
Mr. AMMEN: There will be an exception noted to each of these rulings.
The COURT: Yes.

Mr. AMMEN:

Q. Have you been in possession of this lot since the execution or date of this deed to the Chicago Real Estate Loan and Trust Company?

Mr. ILES: That is objected to on the same ground.
The COURT: Objection sustained.
Mr. AMMEN: The same offer.
The COURT: Yes.
(To which ruling of the court, the defendant by his counsel, then and there duly excepted.)

Mr. AMMEN:

Q. Since June 10, 1896, the date of the deed, have you been in possession at any time since then, June 10, 1896, of this lot.

Mr. ILES: I object to that.
The COURT: Objection sustained.
Mr. AMMEN: I offer to prove by the answer that he has not been.
The COURT: Yes.
(To which ruling of the court, defendant by his counsel, then and there duly excepted.)

Cross-examination waived.

Mr. AMMEN: That is our case.

Defendant rests.

Mr. ILES: Now, your honor, we ask a judgment upon the proofs and the record.
Mr. AMMEN: Well, we will object to it.
Mr. MARTIN: What is your reason?
Mr. AMMEN: We would like to consider that question as to introducing the further requisites in connection with the tax deeds.

41 The COURT: Well, I won't decide it now for two reasons, in the first place, I will give you an opportunity to bring in the evidence of the necessary steps up to the tax deeds, and the second reason is I want to examine this deed to the corporation to see whether or not I should sustain the objection. If you will bring in your testimony proving those other steps to make the tax deeds——

Mr. AMMEN: If you will fix the time, then we will come in and complete it.

The COURT: Well, it wouldn't take very much time.

Mr. AMMEN: You will permit us to make any proof necessary in case you sustain the objection.

The COURT: I think the best thing we can do with this would be to set it over. I will set it for next Monday at half-past four.

Whereupon the further taking of testimony in this cause was adjourned to Monday, June 2nd, 1902, at 4:30 o'clock p. m.

CHICAGO, *June 2nd*, 1902.

Whereupon a further adjournment was taken to June 26th, 1902.

CHICAGO, ILLINOIS, *June* 26, 1902.

Court met pursuant to adjournment. The same parties being present the following proceedings were had, to-wit:

Mr. AMMEN: The question pending at the adjournment of this case was as to the admissibility of the general deed.

The COURT: Yes, I recollect.

Mr. AMMEN: I find that the authorities are all one way apparently. There don't seem to be any conflict among them. I want to cite, first the principle laid down in Devlin on Deeds.

The COURT: You offered that deed?

Mr. AMMEN: Yes, and your honor was of the impression that it was too general.

42 The COURT: Let us get in the evidence first. I am inclined to change my mind in relation to that deed. I do not want to take the time just now in hearing arguments. I want to hear the evidence.

Mr. AMMEN: The evidence—your honor will remember that the deed was not admitted.

The COURT: I know it was not.

Mr. AMMEN: Is it now admitted subject to objection?

The COURT: I am inclined to admit it. I am frank to say I do not think it will make any difference in this case whether it is in or out. The only reason I made the statement was I did not know but they had concluded to admit it.

Mr. AMMEN: Then for the present the deed is admitted?

The COURT: Yes.

The said certified copy of deed admitted is hereinafter shown as "Defendant's Exhibit 1."

Mr. AMMEN: I offer the certified copies of the two tax deeds already referred to with certified copies of what is generally referred to as prerequisites, namely, the tax records and precepts and the applications on which the deeds were issued.

Which papers were received in evidence and marked "Defendant's Exhibits 2, 3, 4, 5, 6 and 7," respectively, and the same are hereinafter shown as a part of this bill of exceptions.

Mr. AMMEN: Now, there is one other proposition that I want to meet with proof. There was a question raised here about the right of this corporation to receive this deed for this real estate. There was an exception or objection to the exclusion of the offer of this testimony.

The COURT: Yes.

43 Mr. AMMEN: I spoke to Mr. Iles about introducing the charter of the company——

The COURT: If you want to discuss this case do not do it right here; I cannot hear it.

Mr. AMMEN: I offer the private charter of the company originally called as stated in the charter the "Peoria Starch Manufacturing Company," granted in 1857 and printed in the volume of Illinois Private Laws of 1857, and particularly the part in relation to the holding of real estate.

It is shown on pages 449 and 450 of said volume. This name was afterward changed to the Chicago Real Estate Loan and Trust Company, and that fact is admitted, is it not, Mr. Iles?

Mr. ILES: I will admit that the name "Peoria Starch Manufacturing Company" was changed to the name Chicago Real Estate Loan and Trust Company.

Mr. AMMEN: And that that change was made before the date of the general deed?

Mr. ILES: Yes.

Mr. AMMEN: That, with the exception of these tax deeds—of course I offer with the tax deeds the proofs of prerequisites.

The COURT: Any objection to these tax deeds?

Mr. AMMEN: If you want to save time, Mr. Iles, let them go in subject to objection.

The COURT: I will let Mr. Iles have a chance to examine them.

Mr. ILES: Now, we renew our objection to the admissibility of these tax deeds in this case. They are inadmissible for the want of proper proof of their being issued in conformity with the law. These are not sufficient evidence to conform to the law. There is no process to this one of any kind. There is nothing to show that any sale has ever been had.

The COURT: If that is the only objection you have I will admit them.

44 Mr. AMMEN: All we want to get is what the record shows.

The COURT: Have you got everything in the record? You

get all the record shows and I will admit it. I will not ask anything more than the record shows, but I am inclined to think——

Mr. ILES: These are insufficient.

Mr. AMMEN: I think the gentleman may be right as a matter of law; I think they may be all insufficient under the law; I think they may have been prejudged as insufficient by decisions in other cases of similar questions. I do not think there is a tax title in the county that can be sustained as a title deed; that is my judgment as a lawyer, but I do not admit such facts in this case. I am only expressing my opinion.

Mr. ILES: Upon the examination of these I find that the objections which have been sustained in the trial of adjudicated cases upon tax titles, that is defects that have been cited as objections and been sustained, are all present in these.

The COURT: I sustain the objections to the tax deeds and exclude said Defendant's Exhibits 2, 3, 4, 5, 6 and 7.

Mr. AMMEN: I preserve an exception and preserve the right to make a showing as to——

The COURT: You may have an exception.

And the defendant than and there duly excepted to such ruling and action of the court and to the exclusion of the said exhibits, severally.

Mr. AMMEN: That is our evidence, our case.

Whereupon the defendant rested.

The said private charter above referred to is hereinafter shown as Defendant's Exhibit 8.

And thereupon in rebuttal the plaintiff offered the following:

45 Mr. ILES: Have you those leases that we served notice on you to produce of the Union Wire Mattress Company?

Mr. AMMEN: No, I have not.

Mr. ILES: Then, your honor, we are provided with tenants' leases or copies; we have them here.

The COURT: I think it has been held that the lease and the copy are both original.

GUY A. MALCOLM, a witness called on behalf of the complainant being first duly sworn, testified as follows:

Direct examination.

By Mr. MARTIN:

Q. What position do you occupy?

A. I have charge of the books of the Union Wire Mattress Company.

Q. Have you charge of the lease on lot 11, block 78 Elston's addition to Chicago?

A. I think that is the description of them.

Q. Please produce the leases that you have of this property.

(Witness producing papers, handing the same to counsel.)

—. There are three others.

Q. These are all the leases you have on hand, are they, so far as you know?

A. Yes, sir.

Q. How long have you been in the employ of the Union Wire Mattress Company?

A. About twenty years.

46 Q. Is the Union Wire Mattress Company in pos-sion of the property described in these leases?

A. They are.

Q. How long have they been in possession?

A. Since about 1889 or longer; I remember that far back. I believe longer than that.

Mr. MARTIN: We desire to offer in evidence first a lease dated the 9th day of April, 1889, between George F. Harding, owner of said lot No. 11, and the Union Wire Mattress Company, lessee.

The COURT: Have you any objection to it?

Mr. AMMEN: I object to it as irrelevant and incompetent and immaterial and second because there is no proof of signature.

The COURT: We will admit it; the objection is overruled.

(To which ruling and action of the court defendant, by his counsel, then and there duly excepted.)

Whereupon said paper was marked by the reporter "Exhibit A" of June 26, and the same was later on — said trial excluded by the court as hereinafter shown.

Mr. MARTIN: I desire to offer in evidence lease dated the 21st day of February, 1899, between George F. Harding, owner of lot No. 11, block 78 of Elston's addition to Chicago, and the Union Mattress Company—Union Wire Mattress Company, lessee, leasing lot 11 in block 78 in Elston's addition to Chicago, being the property of George F. Harding, as recited in the lease signed by the parties.

Mr. AMMEN: The same objections, namely, that it is incompetent, irrelevant and immaterial and no proof of signature.

(Which objections were overruled by the court and said
47 paper admitted in evidence, to which action and ruling of the court defendant, by his counsel, then and there duly excepted.

Said paper was thereupon marked by the reporter "Exhibit B of June 26th," and the same is hereinafter shown as a part of this bill of exceptions.

Mr. MARTIN: I desire next to offer in evidence lease dated the 17th day of January, 1901, between George F. Harding, owner of lot 11, and the Union Wire Mattress Company, lessee, leasing block 11—leasing lot 11 of block 78, Elston's addition to Chicago, being

the property of said George F. Harding and purporting to be signed by George F. Harding, by G. T. Van Meter.

Mr. AMMEN: The same objections as to this—incompetent, irrelevant and immaterial and no proof of signature.

The COURT: The objections are overruled.

(To which ruling defendant then and there excepted.)

Mr. AMMEN: I desire to call attention to the fact that this does not purport to be signed by Mr. Harding, except by some one else; so as to this and the other one I make the further special objection that there is no proof of agency or authority shown as well as no proof of signature.

(Which objection was overruled by the court, to which ruling of the court the defendant then and there *accepted*.)

Whereupon said paper was marked "Exhibit C of June 26th" and received in evidence by the court, and the same is hereafter shown as a part of this bill of exceptions, and to the admission of the same in evidence the defendant then and there duly excepted.

48 Mr. MARTIN: Mr. Malcolm, is your company paying any rent under these leases?

A. Yes, sir.

Q. To whom have they paid that rent?

(Objected to by defendant; objection overruled, to which ruling of the court defendant, by his counsel, then and there duly excepted.)

A. To George F. Harding, or his representative or collector; sometimes we mailed a check direct.

The COURT: I will have to sustain that objection.

Mr. AMMEN: I move to exclude the answer.

The COURT: I will exclude that answer.

Mr. MARTIN: Have you paid any directly to Harding; did you pay any to him personally yourself?

A. Not that I recollect.

Q. Have you drawn any checks as bookkeeper?

A. Yes, sir.

Mr. AMMEN: I object to that; the checks are the best evidence.

The COURT: I will have to sustain that.

Mr. AMMEN: Your honor, as to this first lease offered, upon my own examination, I am inclined to think it is Mr. Harding's signature. I find it was back in 1889. This was in 1899, way before the deed.

The COURT: If that is true I will exclude it.

Mr. ILES: Why?

Mr. AMMEN: Why, it was way back of this deed.

Mr. ILES: That shows him exercising the acts of continuous ownership right along.

The COURT: I will sustain the objection to this lease. (referring to said "Exhibit A"), and exclude it.

Mr. MARTIN: Now, if the court please, we would like an opportunity to produce these checks in the possession of the company.

49 The COURT: You need not come in here any more, but any check you produce endorsed on the back by Harding, showing that he received the money, I will admit. Anything to show payment in the way of rent from these parties. If he endorsed the check on the back I will admit it.

Mr. MARTIN: And the receipts?

The COURT: And the receipts in the same way.

The WITNESS: Do I understand, his personal signature?

The COURT: His personal signature.

Cross-examination by Mr. AMMEN:

Q. What is your position in this company?

A. I have charge of the books there, full charge of the books and papers.

Q. Have you charge of the entire business?

A. No, sir.

Q. Did you negotiate or make any of the leases on this property?

A. No, sir.

Q. Did you have anything personally to do with the making of any of the leases on this property?

A. I took one in for signature at one time, that is all I had to do with it; one of those leases, I don't recollect which one.

Q. Can you tell which one of these leases it was?

A. No. I don't recollect now.

Q. Whether it was the first one or one of the others?

A. It was one of the others; one of those last three.

Q. You did not see George F. Harding at the time?

A. No.

Q. You never met Mr. George F. Harding?

A. No.

50 Q. You do not know him at all?

A. No.

Q. Now, why do you say that these people are occupying these premises under these leases; what do you know about that personally?

The COURT: He did not say that they occupied it under the lease, did he?

Mr. AMMEN: Yes, I think he did.

The COURT: I understood him to say they were in possession of this property; he could not answer that question; that would be a question for the court. To have no misunderstanding these leases that are now in evidence, have your party got possession of those premises described in those leases?

A. Yes.

Mr. AMMEN: How do you know the legal description?

A. Well, I took it from the leases.

Q. You gave it from that, did you not?

A. I don't know as I have; I would have to look it up.

Q. Do you know the legal description of the property that your people are occupying?

The COURT: He means as described in these leases; he does not know the legan description, of course.

Mr. AMMEN: I am going farther than that; he does not even know that this property is the property that was occupied.

The COURT: I know what they described before and I know what is in that lease as described. The comparison of the testimony with the lease settled it.

Mr. AMMEN: Has he testified that he occupied those premises?

The COURT: Yes.

Mr. AMMEN: I want to know how he knows that it was the same property.

The COURT: You may ask him.

Mr. AMMEN: There are very few tenants that know the legal description of the property they occupy.

The COURT: That is right; go ahead.

Mr. AMMEN: The owner of lot 11——

51 The COURT: Let me straighten it out (to the witness). Do you know whether the premises your people are now occupying are legally described correctly in this lease, do you?

A. No, I don't. I only——

The COURT: Do not spend any time on it. The fact is it does not make any difference whether it is described correctly or not. Is there anything else from this witness?

Mr. MARTIN: We really want the checks endorsed by Mr. Harding and the receipts for the rent.

I would like to offer in evidence — to objections *to* judgment for delinquent taxes of the Chicago Real Estate, Loan & Trust Company, George F. Harding and Abner C. Harding for the year 1897 so far as affects the property in question, and I will read that into the record.

Mr. AMMEN: I object to this as incompetent, irrelevant and immaterial, and for the reason that it don't purport to be signed by Mr. Harding, and there is no proof that it was signed by him, or by anybody authorized to sign for him.

(Which objections were overruled, and the said paper admitted in evidence. To which ruling of the court and to the admission of said paper in evidence, defendant by his counsel then and there duly accepted. The said paper was marked by the reporter "Exhibit D of June 26th" and is hereinafter shown as a part of this bill of exceptions.)

52 Mr. MARTIN: I will read the portion that affects this property.

"STATE OF ILLINOIS, } ss:
County of Cook, }

In re application for judgment, delinquent general taxes 1897, etc.

The undersigned, George F. Harding, Chicago Real Estate Loan and Trust Company, and Abner C. Harding, jointly and severally represent that they are jointly and severally the owners of or interested in lot 11, block 78 Elston's addition of Chicago," with other property described here.

It is not necessary to read the other property.

The COURT: No, you need not read about any other property except the property in question.

Mr. MARTIN: And it is signed George F. Harding and Abner C. Harding and the Chicago Real Estate Loan and Trust Company, by William J. Ammen, *his* attorney.

53 And thereupon the plaintiff rested its case.

Mr. AMMEN: Now, I want to renew the offer to prove by Mr Harding, the defendant, that he has received no conveyance of any interest whatsoever in this lot, no sort of a conveyance of any kind or description or otherwise acquired any interest in or to the same, since the date of this general deed June 10, 1896.

Mr. ILES: I object.

The COURT: I will have to sustain the objection.

Mr. AMMEN: Will these gentlemen consent that Mr. Harding, the defendant, will so testify?

The COURT: What do you say to that?

Mr. ILES: We will not admit it. We hold that the evidence is incompetent and we object on that ground; it would be illogical for us to agree to it.

The COURT: I think you are right. Suppose we let the record show that he, the defendant, is here himself and offers to testify that he has not acquired any interest by conveyance or otherwise since the date of the general deed.

Mr. ILES: Well, that is all right.

And thereupon the court refused to admit such offered testimony, — which refusal the defendant then and there excepted.

Mr. AMMEN: Well, that is all.

The COURT: Is there anything further?

Mr. ILES: Nothing further, with the exception of producing those checks.

The COURT: You need not have those here for the purpose of having the argument. You can produce anything Mr. Harding has signed, his receipt or anything with his endorsement on the back of the check I will admit, but so far as the argument is concerned, you need not wait for that.

54 Mr. AMMEN: Does your honor understand that these leases "Exhibits B and C" do not even purport to be signed by Mr. Harding personally.

The COURT: Yes.

Mr. ILES: They purport to be signed by some one else.

The COURT: You will have to do this with those papers: I want to make your record right and I can safely say it to counsel in this case; unless you prove the signatures there by Van Meter and his agency I will have to exclude those two leases. If you do do it I will let them stand. It is only a question now of leaving these leases in or putting them out.

Mr. ILES: I understand we are not ready to argue the case; we must bring in Van Meter in regard to those leases?

The COURT: Why do you not make your argument on the basis that they are in; you have got this evidence in. Supposing I should feel I would have to exclude these leases? If you want to argue this case to-day you can do it. The only question is, whether I am going to admit or exclude these two leases.

Mr. ILES: It is understood that if the court excludes any documentary evidence offered here this afternoon, that our exception may go in.

The COURT: Yes.

Whereupon the further taking of testimony in this case was adjourned to July 2, 1902.

And afterward, to-wit: on the 2nd day of July, A. D. 1902, being one of the days of the June term of said court, before his honor Charles G. Neely, one of the judges of said court, sitting on the common law side thereof, without a jury, the said cause came on for further trial.

Messrs. Iles & Martin appearing for plaintiff; Mr. William J. Ammen appearing for defendant.

And thereupon the plaintiff, to maintain the issues on its part, introduced the following evidence, to wit:

55 G. A. MALCOLM, called as witness on behalf of the People, first being duly sworn, was examined in chief by Mr. Martin, and testified as follows:

Q. State your name?

A. G. A. Malcolm.

Q. What position do you occupy?

A. I have charge of the books for the Union Wire Mattress Company.

Q. How long have you been in their employ?

A. Twenty years.

Q. How long?

A. About twenty years.

Q. Have you in your possession checks drawn to the order of George F. Harding?

A. Yes, sir, I have.

Q. Please produce them?

Mr. AMMEN: If the court please, when this matter went over, it was for two purposes, to prove the signature to the leases by somebody having authority to sign them, then if the leases went into evidence, this evidence as to checks, etc., whatever it is, would be in connection with them. Of course, these checks, even if in payment of rent, would be incompetent unless the leases are in evidence.

The COURT: No, the checks are competent if they are endorsed by Harding, which would indicate that he had received the money on them.

Mr. AMMEN: Even without the leases in evidence?

The COURT: Oh, yes, it is.

Mr. MARTIN:

Q. Have you those checks, some of the checks?

A. There are three.

Q. The receipts attached to each of these checks, were they received—were those vouchers received, those receipts attached
56 to those checks, was that the voucher returned for those checks?

A. That is the voucher returned for the checks.

Q. Who were those checks delivered to, Mr. Harding?

The COURT: Oh, that don't make any difference.

Mr. MARTIN: Well, we want to show they were mailed to him.

The COURT: What is the difference? His name is on the back, isn't it?

Mr. MARTIN: Well, still another——

The COURT: All right, if there is any point to it.

Mr. AMMEN: If he knows they were delivered personally to him.

The COURT: Well, he may answer.

A. I can tell.

Mr. MARTIN:

Q. How were they delivered?

A. Two I think were mailed and one was delivered to the collector.

Q. And are these checks in the condition as received by you from the bank in due course of business, with the endorsements on the back of them?

A. Just the same as we received them from the bank.

Mr. MARTIN: We offer these checks with the vouchers, in evidence.

Mr. AMMEN: We object to them and each of them as incompetent,

immaterial and irrelevant, and because the genuineness of the signatures on the back of the checks or to the receipts is not proven.

The COURT: Let me see them.

Mr. AMMEN: I object to each for lack of proof of signature, as far as they purport to be signed by Mr. Harding—just half a minute, your honor, until I get the objection stated—and for lack of
57 proof of authority so far as they purport to be signed by any one other than George F. Harding.

The COURT: I will overrule the objections.

(To which ruling of the court, and to the admission of said checks and receipts in evidence severally, the defendant, by his counsel, then and there duly excepted.)

Said checks and vouchers were and are in the following words and figures, to-wit:

No. 4743.

Union Wire Mattress Co., 73–83 Erie St.

CHICAGO, *May* 21, 1902.

Pay to the order of George F. Harding, $150.00 one hundred and fifty dollars.

To State Bank of Chicago, Chicago, Ills.

F. A. POWERS,
Sec'y and Treas.

Endorsed as follows by printing stamp:
Pay First Nat'l Bank of Chicago or order, Geo. F. Harding.

Office of Geo. F. Harding, 155–157 Washington St.

Telephone main 3394.

$150.00. CHICAGO, ILLS., *May* 22, '02.

Received of Union Wire Mattress Co., one hundred and fifty dollars on account of rent of premises lot 11 B. 78 Elston's addt.

For May, June and July rent, 1902.

GEO. F. HARDING,
By G. T. VAN METER.

58 No. 26095.

Union Wire Mattress Co.

CHICAGO, *May* 19, 1897.

Pay to the order of Geo. F. Harding $125.00 one hundred twenty-five dollars.

State Bank of Chicago, Chicago, Ills.

F. A. POWERS,
Sec'y & Treas.

Endorsed as follows by printing stamp:
Pay to First National Bank of Chicago or order. Geo. F. Harding.

Office of Geo. F. Harding, 155–157 Washington St.

Telephone 3394.

$125.00. CHICAGO, ILLS., *May* 19, 1897.

Received of Union Wire Mattress Co., one hundred twenty-five dollars on account of rent of premises lot 11 N. Branch St.
For May, June & July rent.

GEO. F. HARDING,
By G. T. VAN METER.

No. 6978.

Union Wire Mattress Co., 73–83 Erie St.

CHICAGO, *Feb.* 22, 1899.

Pay to the order of Geo. F. Harding $150.00 one hundred fifty dollars.
To State Bank of Chicago, Chicago, Ills.,

F. A. POWERS,
Sec'y & Treas.

Endorsed "Geo. F. Harding," by printing stamp.

Office of Geo. F. Harding, 155–157 Washington St.

Telephone 3394.

$150.00. CHICAGO, ILLS., *Feb.* 22, 1899.

Received of Union Wire Mattress Co., one hundred & fifty dollars on account of rent of premises 11 N. Branch St. for Feb., Mar. & Apr., 1899.

GEO. F. HARDING,
By J. S. ZWECK.

59 R. B. FUESSLE, a witness on behalf of the People, having been first duly sworn, was examined in chief by Mr. Martin and testified as follows:

Q. State your name.
A. R. B. Fuessle.
Q. What position do you occupy?
A. Receiving teller at the First national bank.
Q. Do you receive deposits in the letter H.
A. Yes, sir.
Q. I call your attention to the check dated May 21, 1902, with the endorsements on it, and ask you to state if you have a deposit slip showing the deposit of that check in your bank.
A. Yes, sir, I have it with me.
Q. Please produce it?

(The witness produced a deposit slip.)

Mr. MARTIN: We offer in evidence deposit slip in the name of George F. Harding, dated May 22, 1902, showing deposit of $150 on that day.

Mr. AMMEN: You offer just the deposit slip?

Mr. MARTIN: The deposit slip.

Mr. AMMEN: I object to it as incompetent, immaterial and irrelevant, and because there is no proof as to its being made by any one for Mr. Harding, by him or any one for him.

The COURT: Overruled.

(To which ruling of the court and to the admission of said deposit slip in evidence, the defendant, by his counsel, then and there duly excepted.)

Said deposit slip was and is in the words and figures following, to-wit:

152.

First National Bank of Chicago.

Deposited for account of Geo. F. Harding.

MAY 22, 1902.

						Checks and drafts on other towns and cities.			
Currency.....									
Gold.....									
Checks on this bank.			Checks on other Chicago banks.						
						54	00		
						150	00		
						16	00		
						220	00		

A. M. Deposit.

Mr. MARTIN:

60 Q. From your examination of the check Mr. Feussle, and from this deposit slip, can you state whether that check went to the credit of Mr. George F. Harding?

Mr. AMMEN: I object to that as incompetent, immaterial and irrelevant, particularly because the papers themselves are to show what they are.

The COURT: Well, he may answer whether he knows of his own knowledge.

Mr. MARTIN: In the course of business.

To which ruling of the court the defendant, by his counsel, then and there duly excepted.

A. Yes, sir, I do.

The COURT: I would like to find out if anybody has deposited money at the First national bank for somebody else.

Mr. MARTIN:

Q. I call your attention to the other two checks that have been offered in evidence here Mr. Feussle, and ask you to examine the endorsements on the back of them and state if you can state as to whose account, to whose credit, these checks went.

Mr. AMMEN: The same objections.
The COURT: Overruled.
(To which ruling of the court the defendant by his counsel, then and there duly excepted.)

A. They went to the credit of George F. Harding.

To the admission of said testimony the defendant then and there excepted.

Mr. MARTIN: Now, on this evidence, with the attending vouchers, we offer in evidence the leases, showing ratification of the leases by Mr. Harding, because if he has accepted money which has gone to the credit of his account, whether they were executed with authority or without authority.

61 The COURT: I am against you. I will sustain the objections to the leases.

Mr. ILES: Well, we introduce this as evidence of ownership exercised by George F. Harding.

The COURT: Well, I admitted these but the leases I will exclude.
(To which ruling of the court, the People, by their counsel, then and there duly excepted.)

Mr. AMMEN: Now, if the court please, in addition to the objections entered, I move to exclude these vouchers and checks, and the testimony in relation to them, as immaterial without the leases.

The COURT: Overruled.
(To which ruling of the court the defendant, by his counsel, then and there duly excepted.)

The COURT: Is that all you want to offer?

Mr. MARTIN: That is all.

The COURT: What witnesses have you?

Mr. AMMEN: I want to call parties who are now here in the court room, George F. Harding, Jr. and G. T. Van Meter, in reference to these vouchers and checks, as to how they were endorsed, why they were put in Mr. Harding's name, etc. I want to show this state of affairs: that a general real estate and renting agency is run by Mr. George F. Harding; that George F. Harding, Jr., his son (assisted by Mr. Van Meter, G. T. Vanmeter,) has now, and has had for some years, the entire charge of that agency; that rents are collected for different owners of property, and in whatever name the checks come in, whether in the name of Mr. George F. Harding, George F. Hard-

ing, Jr., or A. C. Harding, or the Firemen's Insurance Company, or Chicago Real Estate Loan & Trust Company, or any other
62 owners for whom they rent property, the checks are deposited in one common account in the name of Mr. George F. Harding; that the different owners' accounts are kept, showing the rents collected from each piece of property; and that an account of rents is rendered to each owner, and the rents divided between the owners.

The COURT: Oh, I won't stop to hear that testimony. These deposit slips show simply money deposited; these receipts show rents and receipts from the very property in question; so that the fact that different owners of different property, the landlords receive rent and put it in his name, would not tend to show anything.

(To which ruling of the court the defendant then and there excepted.)

Mr. AMMEN: I want to show further, by these witnesses, that that was and is the situation as to this particular property; that these rents were and are collected for the Chicago Real Estate, Loan & Trust Company, and if the leases had gone in evidence I was prepared to show the same state of facts with reference to the leases that I am prepared to show with reference to those checks and receipts.

The COURT: This must be short. If you have got any witnesses you want to put on the stand to show that the rent on this particular property was thus collected you may do it.

Mr. AMMEN: I am able to do that.

The COURT: Let's cut it short right here. This is a petition here, isn't it? You filed a petition in this case, didn't you?

Mr. ILES: No, we filed an action in debt to collect these taxes.

The COURT: Call your witnesses. Let's get right to the point.

Mr. AMMEN: Very well.

63 GEORGE F. HARDING, JR., a witness called on behalf of the defendant, having been first duly sworn, was examined in chief by Mr. Ammen and testified as follows:

Q. You are the son of the defendant?
A. I am.
Q. Your name is George F. Harding, Jr.
A. George F. Harding, Jr.
Q. What is your business, Mr. Harding?
A. Real estate.
Q. What do you do in connection with your father's business?
A. I handle my father's business.
Q. To what extent?
A. Entirely and completely.
Q. What business does he conduct at 155–157 Washington street?
A. He does not conduct any business there except through us.
Q. And what is that business?
A. We collect his rents.

Q. What other rents do you collect?
The COURT: It don't make any difference.
Mr. AMMEN: Do you collect the rents of the Chicago Real Estate Loan & Trust Company?
The COURT: That you may ask.
A. I do.

Mr. AMMEN:

Q. I show you these checks that have been offered in evidence, and the vouchers in connection with them, and I will ask you to look at them and state for whom those collections were made?
A. Those collections were made for the Chicago Real Estate Loan & Trust Company.
The COURT: Who is that company?
A. It is a real estate company.
Q. A corporation is it?
A. A corporation.

64 Cross-examination.

Mr. ILES:

Q. Who is the president of that company?
A. I don't know who he is just now.

The COURT:

Q. Does George F. Harding hold any office in it?
A. None at all.

Mr. ILES:

Q. Well, where does it do business?
A. Its officers are at Monmouth, Illinois.
Q. Well, are you the agent of that company?
A. I am not the agent of it except as to the collection of some rents.
Q. Well, are you the agent of that company for the purpose of collecting rents in Chicago?
A. On some property.
Q. On what property?
A. On this property among others.
Q. When did you become its agent?
A. Oh, I have been its agent for quite a while.
Q. Well, but when?
A. Several years.
Q. Well, what years?
A. Well, on some pieces of property just lately.
The COURT: On this piece of property?
Mr. ILES: This particular piece of property.
A. Oh, way back in '96.

Q. Then you have been its agent ever since '96 on this property?
A. I have.
Q. Well, how did you come to be its agent?
A. I was put in charge of it.
Q. By whom?
A. By——
The COURT: Well, answer the question. Let's get along here. I have got something else to do you know.
A. I don't remember.
65 Q. Did George F. Harding ask you to do that?
A. No.
Mr. ILES: Well, with whom do you settle?
A. We settle with Mr. Callow.
Q. Who is Mr. Callow? Where does he live?
A. He lives in Monmouth, Illinois.
Q. When did you make your last settlement with Mr. Callow?
The COURT: I am not going to take any more time on this?
Mr. ILES: Now your honor, this is quite a material matter.
Mr. AMMEN: Your honor, we can show in five minutes——
Mr. ILES: Let him go ahead and show it then.
Mr. AMMEN: —That every agency in town conducts its business exactly the same way.
Mr. ILES: That don't make a bit of difference to this case. Now I want to get at the bottom of it.
Mr. AMMEN: For the purpose of some other litigation, I suppose?
Mr. ILES: No, sir, for the purpose of this litigation.
The COURT: I will stop it right here.
Mr. ILES: Now your honor, there is another question I want to ask him.

Q. Why didn't you deposit this money to the account of the Chicago Real Estate Loan & Trust Company?
A. Because I deposited it to my own account.
Q. To your own account?
A. I signed every check, at least 99 per cent. of them in this account, and have since 1891.
Q. Well, is that your personal account?
A. It is the account of the firm.
66 Q. Well now, what is that firm?
A. The chief owners of that firm are my brother and I.
Q. Well, but it is George F. Harding. Now, who is George F. Harding?
A. George F. Harding is my father.
Q. Yes. Now is that your father's account?
A. He checks some money out of it, very little.
Q. He draws out of it on his personal check?
A. Yes, and it is charged up to him.
Q. Now, as a matter of fact, hasn't the Chicago Real Estate Loan & Trust Company got an account there in the First national bank?

A. Not that I know of.

Q. Did you ever deposit any money to the credit of the Chicago Real Estate Loan & Trust Company at that bank through these years for which these taxes run?

A. I deposited money for the Chicago Real Estate Loan & Trust Company at this bank and several other banks during those years.

Q. In the name of the Chicago Real Estate Loan & Trust Company?

A. In the name of the Chicago Real Estate Loan & Trust Company.

Q. Does anybody else deposit for the Chicago Real Estate Loan & Trust Company but you?

The COURT: We will stop here.

A. I certainly don't know.

The COURT: Never mind. We will stop here. We will stop here on this examination. Is there anything further?

Mr. AMMEN: Your honor, I would like to prove this, about this tax objection filed in the county court, "Exhibit D."

The COURT: I won't hear anything about that tax objection

67 Mr. AMMEN: I want to show this state of facts, that Mr. A. C. Harding, under my direction, filed this and signed my name to it, and that on account of its including a long list of property, part of which was owned by A. C. Harding and part by the Chicago Real Estate Loan & Trust Company, and part by George F. Harding, that although it was all assessed in the name of George F. Harding, except one or two pieces, that under my direction he signed and filed it, as I told him it was sufficient to file the objection in the name of the different parties without dividing or specifying which one owned the different lots. He is here to testify to these facts.

The COURT: That is overruled. Let that statement stand as your offer in the record, and I will overrule—that is, sustain the objection to the offer.

(To which ruling and action of the court the defendant then and there excepted.)

Mr. AMMEN: I have the propositions of law, except I want to draw one with reference to these checks and receipts.

The COURT: Well, I will take those you have.

Mr. AMMEN: The other side may have a copy now, which I hand to Mr. Iles.

The COURT: And you want to draw another?

Mr. AMMEN: Just about the checks and receipts.

The COURT: Well, gentlemen, I will decide this case—what is tomorrow? Thursday. I will decide this case—will it be in time if I make it Monday morning? I want time to study these propositions. I don't know what they are.

68 Mr. AMMEN: There is just one suggestion I would like to urge your honor. I would like to be heard just to this effect, that they must prove ownership in Mr. Harding.

The COURT: Oh, I admit that.

Mr. AMMEN: And it ought not to be done by any ambiguous or uncertain evidence.

The COURT: Oh, don't take my time with that sort of thing.

Mr. AMMEN: What I mean is this: If your honor holds that Mr. Harding legally is the owner, he can not recover from the real owner; it is a clear loss to him.

The COURT: That is true.

Mr. AMMEN: They are bound to affirmatively show ownership in him in order to recover.

The COURT: Well, I have not decided it yet.

Mr. AMMEN: I merely want to make that additional argument.

The COURT: I will decide it Monday morning. I do not want any law, gospel or evidence. I want to decide this case.

Mr. MARTIN: There is a statutory provision that after an agent pays the taxes he can not recover the money.

Mr. AMMEN: I will send over to your honor the other proposition with reference to these checks and receipts.

The COURT: Very well. I will decide it Monday morning.

"The said exhibits above referred and identified, so far as not already above shown fully, were and are in words and figures as follows, namely:"

69 PLAINTIFF'S EXHIBIT 1.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Philip Knopf, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the collector's warrants for general taxes for the year 1897, 1898, 1899 and 1900 for the town of North Chicago, in so far as the same relates to the property described in the foregoing copy, all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 17th day of April A. D. 1902.

PHILIP KNOPF,

[SEAL.] *County Clerk and Clerk of the County Court.*

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

72 To collectors.

When a person wishes to pay a real estate tax, he should mention the tract or lot. Many suppose that their names are the guides for finding their lands. This is a mistake; the name is often no guide at all; a person finding his name is not on the land roll, will go away with the idea that his land has been omitted, and get his first information to the contrary by learning that the same has been sold for taxes. As people in many cases do not give in their list to the assessors, they act upon the best information they can obtain, and the consequence is that the wrong name is often set down, and this is especially the case with non-residents.

Collector's Warrant.

STATE OF ILLINOIS, } ss:
County of Cook, }

The People of the State of Illinois to Martin Becker, collector of the town of North Chicago, in said county of Cook and State of Illinois, Greeting:

You are hereby commanded to levy and collect from the several persons named in the roll or book hereto annexed, and herewith committed to you (the same being the tax assessment upon the real property in said town for the current year, and for former years, as therein shown), the several sums of money entered in the column of "Totals" of said roll or book, opposite their respective names. You will proceed to collect the taxes and assessments mentioned in said book, and for that purpose you will call at least once upon each person taxed, named in said book, or at his place of business (if he resides in said town), and make demand for *for* the taxes and assessments charged to him upon his property. Out of the moneys collected by you by virtue hereof, after deducting the compensation to which you are legally entitled, you will pay over as follows, to wit: To the
73 proper officers the amount of tax collected for the support of highways and bridges; and to the supervisor of the town, the moneys which shall have been collected therein to defray town expenses; to the proper school officers, the district school tax, and to the county collector, the county tax and the taxes payable to the State treasurer collected by you, at the *time* and in the *manner* directed by law; and to the city or incorporated town or village treasurer, or other proper officer, the taxes or special assessments collected by you for such city, incorporated town or village, or others, as often and at such time as may be demanded by the proper officer. All of which payments herein specified, you are required to make on or before the 10th day of March next. Hereof fail not to make

returns of your doings, by virtue hereof, under the penalties of the law in such case made and provided.

In testimony whereof, Philip Knopf, county clerk of said county, has hereunto set his hand and affixed the seal of the county court of said county, this 8th day of January A. D. 1898

[SEAL.] PHILIP KNOPF,
County Clerk.

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76 To collectors.

When a person wishes to pay a real estate tax, he should mention the tract or lot. Many suppose that their names are the guides for finding their lands. This is a mistake; the name is often no guide at all; a person finding his name is not on the land roll, will go away with the idea that his land has been omitted, and get his first information to the contrary by learning that the same has been sold for taxes. As people in many cases do not give in their list to the assessors, they act upon the best information they can obtain, and the consequence is that the wrong name is often set down, and this is especially the case with non-residents.

Collector's Warrant.

STATE OF ILLINOIS, } ss.:
County of Cook, }

The People of the State of Illinois to Julius Soloman, collector of the town of North Chicago, in said county of Cook and State of Illinois, Greeting:

You are hereby commanded to levy and collect from the several persons named in the roll or book hereto annexed, and herewith committed to you (the same being the tax assessment upon the real property in said town for the current year, and for former years, as therein shown), the several sums of money entered in the column of "Totals" of said roll or book, opposite their respective names. You will proceed to collect the taxes and assessments mentioned in said book, and for that purpose you will call at least once upon each person taxed, named in said book, or at his place of business (if he resides in said town), and make demand for *for* the taxes and assessments charged to him upon his property. Out of the moneys collected by you by virtue hereof, after deducting the compensation to which you are legally entitled, you will pay over as follows, to wit: To the proper officers the amount of tax
77 collected for the support of highways and bridges; and to the supervisor of the town, the moneys which shall have been collected therein to defray town expenses; to the proper school officers, the district school tax, and to the county collector, the county tax and the taxes payable to the State treasurer collected by you, at the *time* and in the *manner* directed by law; and to the city or incorporated town or village treasurer, or other proper officer, the taxes or special assessments collected by you for such city, incorporated town or village, or others, as often and at such time as may be demanded by the proper officer. All of which payments herein specified, you are required to make on or before the 10th day of

March next. Hereof fail not to make returns of your doings, by virtue hereof, under the penalties of the law in such case made and provided.

In testimony whereof, Philip Knopf, county clerk of said county, has hereunto set his hand and affixed the seal of the county court of said county, this 1st day of February A. D. 1899.

[SEAL.] PHILIP KNOPF,
County Clerk.

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80 To collectors.

When a person wishes to pay a real estate tax, he should mention the tract or lot. Many suppose that their names are the guides for finding their lands. This is a mistake; the name is often no guide at all; a person finding his name is not on the land roll, will go away with the idea that his land has been omitted, and get his first information to the contrary by learning that the same has been sold for taxes. As people in many cases do not give in their list to the assessors, they act upon the best information they can obtain, and the consequence is that the wrong name is often set down, and this is especially the case with non-residents.

Collector's Warrant.

STATE OF ILLINOIS, } ss:
County of Cook, }

The People of the State of Illinois to Julius Soloman, collector of the town of North Chicago, in said county of Cook and State of Illinois, Greeting:

You are hereby commanded to levy and collect from the several persons named in the roll or book hereto annexed, and herewith committed to you (the same being the tax assessment upon the real property in said town for the current year, and for former years, as therein shown), the several sums of money entered in the column of "Totals" of said roll or book, opposite their respective names. You will proceed to collect the taxes and assessments mentioned in said book, and for that purpose you will call at least once upon each person taxed, named in said book, or at his place of business (if he resides in said town), and make demand for *for* the taxes and assessments charged to him upon his property. Out of the moneys collected by you by virtue hereof, after deducting the compensation to which you are legally entitled, you will pay over as follows, to wit:

81 To the proper officers the amount of tax collected for the support of highways and bridges; and to the supervisor of the town, the moneys which shall have been collected therein to defray town expenses; to the proper school officers, the district school tax, and to the county collector, the county tax and the taxes payable to the State treasurer collected by you, at the *time* and in the *manner* directed by law; and to the city or incorporated town or village treasurer, or other proper officer, the taxes or special assessments collected by you for such city, incorporated town or village, or others, as often and at such time as may be demanded by the proper officer. All of which payments herein specified, you are required to make on or before the 10th day of March next. Hereof

fail not to make returns of your doings, by virtue hereof, under the penalties of the law in such case made and provided.

In testimony whereof, Philip Knopf, county clerk of said county, has hereunto set his hand and affixed the seal of the county court of said county, this 14th day of February A. D. 1900.

[SEAL.] PHILIP KNOPF,
County Clerk.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

84 To collectors.

When a person wishes to pay a real estate tax, he should mention the tract or lot. Many suppose that their names are the guides for finding their lands. This is a mistake; the name is often no guide at all; a person finding his name is not on the land roll, will go away with the idea that his land has been omitted, and get his first information to the contrary by learning that the same has been sold for taxes. As people in many cases do not give in their list to the assessors, they act upon the best information they can obtain, and the consequence is that the wrong name is often set down, and this is especially the case with non-residents.

Collector's Warrant.

STATE OF ILLINOIS, } ss:
County of Cook, }

The People of the State of Illinois to Julius Soloman, collector of the town of North Chicago, in said county of Cook and State of Illinois, Greeting:

You are hereby commanded to levy and collect from the several persons named in the roll or book hereto annexed, and herewith committed to you (the same being the tax assessment upon the real property in said town for the current year, and for former years, as therein shown), the several sums of money entered in the column of "Totals" of said roll or book, opposite their respective names. You will proceed to collect the taxes and assessments mentioned in said book, and for that purpose you will call at least once upon each person taxed, named in said book, or at his place of business (if he resides in said town), and make demand for *for* the taxes and assessments charged to him upon his property. Out of the moneys collected by you by virtue hereof, after deducting the compensation to which you are legally entitled, you will pay over as follows, to wit:
85 To the proper officers the amount of tax collected for the support of highways and bridges; and to the supervisor of the town, the moneys which shall have been collected therein to defray town expenses; to the proper school officers, the district school tax, and to the county collector, the county tax and the taxes payable to the State treasurer collected by you, at the *time* and in the *manner* directed by law; and to the city or incorporated town or village treasurer, or other proper officer, the taxes or special assessments collected by you for such city, incorporated town or village, or others. as often and at such time as may be demanded by the proper officer, All of which payments herein specified, you are required to make on or before the 10th day of March next. Hereof fail not to make

returns of your doings, by virtue hereof, under the penalties of the law in such case made and provided.

In testimony whereof, Philip Knopf, county clerk of said county has hereunto set his hand and affixed the seal of the county court of said county, this 24th day of January A. D. 1901.

[SEAL.] PHILIP KNOPF,
County Clerk.

86 PLAINTIFF'S EXHIBIT 2.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

Sale opened August 6th A. D. 1900. Philip Knopf, county clerk.

Pleas before the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county begun and holden at the court house, in the city of Chicago, in said county and State, on the second Monday, being the 9th day, of July in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fifth.

Court opened by proclamation.

Present thereat: The Honorable Orrin N. Carter, judge of the county court of Cook county. Charles S. Deneen, State's attorney. Ernest J. Magerstadt, sheriff of Cook county.

Attest:

PHILIP KNOPF,
Clerk of the County Court of Cook County.

In the matter of the application of Samuel B. Raymond, county treasurer and *ex officio* collector of the revenue of Cook county, in the State of Illinois, for judgment for delinquent State, county, town, school, road, city, village, park, drainage, assessment, and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook, in the State of Illinois, for the year 1899, and for the due and unpaid back taxes of 1898 and prior years added, and for forfeitures to the State, together with interest, printers' fees, and costs due and unpaid thereon.

And now on this ninth (9th) day of July A. D. 1900, comes
87 into the court Samuel B. Raymond, county treasurer and *ex-officio* collector of the revenues of Cook county, in the State of Illinois, by Charles S. Deneen, State's attorney, in behalf of the People of the State of Illinois, and by Julius A. Johnson, county attorney of Cook county, and by Charles M. Walker, corporation counsel of the city of Chicago, in said county, and by the attorneys respectively of the various towns and villages in said county, and by the attorneys respectively for the various boards of park commissioners in said county, and applies for judgment for the delinquent State, county, town, school, road, city, village, park, drainage assessments and corporation taxes and assessments levied and assessed upon the lands and lots in the county of Cook in the State of Illinois for the year 1899, and for the due and unpaid back taxes of 1898, and prior years added, and for forfeitures to the State, together with interest, printers fees and costs due and unpaid thereon, the record of the delinquent list of said delinquent taxes, assessments forfeitures, back taxes, interests, printers' fees and costs being contained and fully set forth in ninety three volumes numbered one to ninety-three inclusive and hereinafter following, and it appearing to the court and the court finding from evidence here adduced that due notice as required by law has been given of this application for judgment and the time and place thereof. Thereupon on motion of said Samuel B. Raymond, by his attorney respectively as hereinabove set out:

It is ordered by the court that any and all parties desiring to object to the rendition of judgment herein file their objections in writing on or before 10 a. m. Wednesday, July 11th, A. D. 1900.

The following is a list of delinquent lands and lots in the county of Cook and State of Illinois, upon which remain due and unpaid the taxes and special assessments levied and assessed for the year 1899, and upon which remain due and unpaid the amounts for which said lands and lots have been previously forfeited
to the State of Illinois, and which remained unpaid
88 on the first day of November, A. D. 1899, and interest and printers' fees added to said amounts as required by law, and upon which also remain due and unpaid back taxes of 1898 and prior years added—embracing the delinquent taxes and

special assessments together with the interest and printers' fees thereon, if any, contained and set forth in the collector's books with the warrant for the collection of the same attached thereto, issued by the county clerk of said county for the year 1899, which now remains due and unpaid, and showing the names of the owners thereof, so far as known, the proper description of the lands and lots, the valuation on which the tax is extended, the amounts of the consolidated and other taxes and special assessments for the year 1899, the amount for which said lands and lots had been previously forfeited to the State of Illinois, with interest and printers' fees added; the amount of the back taxes, interests and other costs, if any, against each parcel of land or lot respectively, and the due and unpaid taxes for the year 1899 bear interest from the first day of May 1900, at the rate of one per cent. per month until paid or forfeited, parts or fractions of a month are reckoned as a month, all of which taxes and special assessments so levied and assessed for said years and hereinafter set forth and enumerated and interest and printers' fees and other costs due thereon respectively, S. B. Raymond county treasurer and *ex officio* county collector of said county, has been unable to collect, and which said list is this day reported to the county clerk of said county and duly filed.

91 STATE OF ILLINOIS, } ss:
County of Cook, }

I, S. B. Raymond, collector of the county of Cook, do solemnly swear that the foregoing is a true and correct list of the delinquent lands and lots within the county of Cook upon which I have been unable to collect the taxes and special assessments, interests and printers' fees charged thereon, as required by law for the year or years therein set forth, that said taxes remain due and unpaid as I verily believe.

S. B. RAYMOND,
Collector of Cook County, Illinois.

Subscribed and sworn to before me this 9th day of July A. D. 1900.

PHILIP KNOPF,
Clerk of the County Court of Cook County, Illinois.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county, begun and holden at the court house in the city of Chicago, in said county and State, on the second Monday, being the ninth day, of July, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fifth.

Court opened by proclamation.

Present thereat: The Honorable Orrin N. Carter, judge of
92 the county court of Cook county. Charles S. Deneen, State's attorney. Ernest J. Magerstadt, sheriff of Cook county.

Attest: PHILIP KNOPF,
Clerk of the County Court of Cook County.

In the matter of the application of Samuel B. Raymond, county treasurer and *exofficio* collector of the revenue of county of Cook, in the State of Illinois, for judgment and order of sale on delinquent taxes and special assessments levied and assessed for the year 1899 and prior years.

And now, towit, on this day, the eleventh day of July in the year of our Lord one thousand nine hundred, the same being one of the days of the July term A. D. 1900, of this court again comes Samuel

B. Raymond county treasurer and *exofficio* county collector of the revenue of Cook county, by Julius A. Johnson county attorney, and moves the court for judgment and order of sale against the lands and lots contained in the following list, said list comprising volumes one (1) to ninety-three (93) inclusive, and known as the tax judgment, sale redemption and forfeiture record for the amount of said delinquent taxes, interests, penalties and costs due and unpaid thereon for the year A. D. 1899, and prior years.

And it appearing to the court that due notice has been given of the intended application for a judgment and order of sale against said lands and lots, and no sufficient defense having been made or cause shown, except as to the property described in the objections on file, why judgment should not be entered against said lands and lots for the amount of said delinquent taxes, interests, penalties and costs due and unpaid thereon for the year or years herein set forth.

Therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract or tracts or lots of
93 land, or parts of tracts or lots (as the case may be) except as to the property described in the objections on file, in favor of the People of the State of Illinois for the sum annexed to each, being the amount of taxes, interests, penalties and costs due severally thereon.

And it is ordered by the court that the said several tracts or lots of land, except as to the property described in the objections on file, be sold as the law directs to satisfy the amount of taxes, interests, penalties and costs annexed to them severally.

ORRIN N. CARTER,
Judge of the County Court of Cook County.

94 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Philip Knopf, clerk of the county court in and for the county of Cook in the State aforesaid, do hereby certify that the above and foregoing, being volume one to ninety three inclusive and known as the tax judgment redemption and forfeiture record, is a true and correct record of the delinquent real estate in said county against which judgment and order of sale was duly entered in the county court of said county on the 11th day of July 1900, for the amount of the taxes, special assessments interests and costs due severally thereon as therein set forth, and that the judgment and order of court in relation thereto fully appears on said record.

In testimony whereof I have hereunto set my hand and affixed the seal of said county court at my office in the city of Chicago in said county, this 6th day of August, A. D. 1900.

[SEAL.] PHILIP KNOPF,
Clerk of the County Court of Cook County, Illinois.

Sale closed December 19th, A. D. 1900.

PHILIP KNOPF,
County Clerk.

95 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Philip Knopf, clerk of the county court of Cook county, in the State aforesaid do hereby certify that the foregoing is a true and correct copy of the tax judgment sale, redemption and forfeiture record for State, county, city, etc. taxes for 1899 and prior years in so far as the same relates to the property described in the foregoing copy.

All of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 17th day of April A. D. 1902.

[SEAL.] PHILIP KNOPF,
County Clerk & Clerk of the County Court.

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99 EXHIBIT D, JUNE 26.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County.

In re application for judgment delinquent general taxes, 1897, etc.

The undersigned, George F. Harding, the Chicago Real Estate Loan and Trust Company and Abner C. Harding jointly and severally represent that they are jointly and severally the owners of or interested in lots four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), in block six (6), in H. Graves' subdivision west of Cottage Grove avenue of thirty (30) acres south and adjoining north five and seventy two one hundredths acres of north east quarter, section thirty-four (34), town thirty nine (39), range fourteen, also

[On the margin:] Reduced to 12240

Elston's addition to Chicago, lot eleven (11), block seventy eight (78), also

[On the margin:] 2

Lots fifteen (15), sixteen (16), seventeen (17) and eighteen (18), in block two (2), in H. Graves' subdivision west of Cottage Grove avenue south and adjoining north five and seventy two hundredths acres of north east quarter, section thirty four (34), township thirty-nine (39), range fourteen (14), also

[On the margin:] 3 9400

Sub-lot five (5), in county clerk's subdivision of undivided part of lot thirty-one (31), in Ellis' East addition, section thirty-four (34), township thirty-nine (39), range fourteen (14), also three (3) acres west and adjoining east ten acres (10) of the south half (S. ½) of the south west quarter of the north west quarter of section six (6), town thirty-eight (38), range fourteen (14), also S. W. ¼ of S. E. ¼ of S. E. ¼ sec. 7, town 38, range 14, also

[On the margin:] 4 5 6 3850

All that part west of railroad of the east five (5) acres of south half (S. ½) of south west quarter of the north west quarter of section six (6), township thirty-eight (38), range fourteen (14), also

[On the margin:] 5

Five (5) acres west and adjoining east five (5) acres of the south half (S. ½) of the southwest quarter of the northwest quarter
100 of section six (6), town thirty-eight (38), range fourteen, (14), also

[On the margin:] 5

Lot A. and C. in circuit court's partition of south half (S. ½) of section three (3) and that part of north west quarter of Canal reser-

vation in section three (3) town thirty eight (38), range thirteen (13) also

[On the margin:] 7

(Ex. R. R.) South quarter of north west quarter of north east quarter and the south half (S. ½) of the north east quarter of the north east quarter, and (Ex. R. R.) south half (S. ½) of the north east quarter all in section twelve (12) town thirty-seven (37) range thirteen (13), also

[On the margin:] 8 off.

Firemen's Insurance Company's subdivision of the southeast quarter of the southeast quarter in Morgan park in section thirteen (13) town thirty-seven (37), range thirteen (13), lots one to twenty-one (1 to 21) inclusive, block one 1, lots one to twenty-four (1 to 24) inclusive block two (2), lots one to twenty-one (1 to 21) inclusive, block three (3), lots one (1) and two (2), and north half (N. ½) of three (3), and lots seven to twelve (7 to 12) inclusive, block four (4), and lots four to twentyone (4 to 21) inclusive, block six (6), and lots one to twenty-four (1 to 24) inclusive, block seven (7), and lots one to twenty five (1 to 25) inclusive, in block eight (8) also

[On the margin:] 9 off.

Lots one (1), two (2), three (3) and four (4) of Graves and Smith's resubdivision of blocks one (1) and A. and Dexter Place of H. Grave's sub. west of Cottage Grove avenue in section thirty-four (34) town thirty-nine (39), range fourteen (14), in Cook county, Illinois, and that the tax levied and returned as delinquent against said described premises severally for the year 1897, is unjust, excessive, erroneous, illegal and fraudulent, and objects to judgment being had in this behalf as to said described real estate or any part thereof and prays that the assessed valuation of the said property, and the general taxes thereon, severally be reduced to such an amount as this court may deem peoper, correct, equitable and just upon the proof
101 to be made on the hearing of these objections.

[On the margin:] 10

GEORGE F. HARDING,
ABNER C. HARDING,
THE CHICAGO REAL ESTATE LOAN & TRUST COMPANY,
By WM. J. AMMEN, *His Attorney.*

102 STATE OF ILLINOIS, }
County of Cook, } ss:

I, Robert W. Simon, recorder of deeds and keeper of the records, in and for said county in the State aforesaid, do hereby certify, that the annexed is a true and correct copy of the record of a [SEAL.] certain instrument filed in my office the second day of July A. D. 1896, as document No. 2411336 and recorded in Book 5576, of Records at page 633.

In testimony whereof, I have hereunto set my official seal at Chicago, this nineteenth day of May A. D. 1902.

ROBERT M. SIMON, *Recorder.*

Defendant's Exhibit 1.

103 This indenture witnesseth, that the grantor, George F. Harding of the city of San Diego in the county of San Diego and State of California, for the consideration of ($5.00) five dollars, convey- and quitclaim- to Chicago Real Estate Loan & Trust Company, of the city of Chicago county of Cook and State of Illinois, all interest in the following described real estate, to-wit:

Any and all lands of every kind and description claimed or owned by me in the State of Illinois and all lots & lands of every description in the city of Chicago, in which I have any right, title or interest whatsoever, situated in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this tenth day of June, A. D. 1896.

GEORGE F. HARDING. [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

I, George F. Harding, Jr., notary public in and for said county, in the State aforesaid, do hereby certify that George F. Harding, being George F. Harding, Senior, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 1st day of July A. D. 1896.

[Notarial Seal, Geo. F. Harding, Jr., Cook Co., Ill.]

G. F. HARDING, JR.,
Notary Public.

No. 2411336.
Filed for record July 2, A. D. 1896. 9 a. m.

SAM'L B. CHASE, *Recorder.*

Defendant's Exhibit 1.

104 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Robert M. Simon, recorder of deeds and keeper of the records, in and for said county in the State aforesaid, do hereby certify, that the annexed is a true and correct copy of the record of a certain in-

strument filed in my office the thirteenth day of December A. D. 1878, as document No. 204517 and recorded in Book 822, of Records at page 531.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed my official seal at Chicago, this twentieth day of May A. D. 1902.

ROBERT M. SIMON, *Recorder.*

Defendant's Exhibit 2.

105 Klokke "to" Young. } Tax Deed.

No. K. 330.

STATE OF ILLINOIS, *Cook County,* } ss:

Whereas, at a public sale of real estate, for the non-payment of taxes made in the county aforesaid on the fourteenth (14th) day of November A. D. 1876, the following described real estate was sold, to wit:

The north twenty eight (28) feet of lot twenty one (21) in block twenty (20) and the north twenty two (22) feet of lot one (1) in the assessor's division of block twenty four (24) in the Canal Trustees' subdivision of the south fractional quarter (S. fr'l ¼) of section three (3) township thirty nine (39) north of range fourteen (14) east of the third (3rd) principal meridian. Lot six (6) in the east half (E. ½) of block three (3) the north twelve and one half (12½) feet of lot six (6) and private alley adjoining the north twelve and one half (12½) feet of lot six (6) and the south two (2) feet of lot eight (8) in block four (4) and except street, lot six (6) in the assessor's division of all that part lying south of White street of block five (5) all in Bushnell's addition to Chicago:

Lot eleven (11) in block sixteen (16) the north half (N. ½) of lot one (1) in block twenty (20) lots nine (9), ten (10), eleven (11) and twelve (12) in block twenty three (23) and the east half (E. ½) of lot three (3) in block twenty five (25) all in Johnston Roberts and Storrs' addition to Chicago and lot five (5) in block one (1) in Delevan's addition to Chicago; also at said sale on the fifteenth (15th) day of November A. D. 1876, the following described real estate was sold, to wit Lots one (1), two (2), three (3) and twenty two (22) in block eight (8) and lot four (4) in block thirteen (13) all in Delavan's addition to Chicago; lots sixty six (66) and one hundred and twenty five (125) in Hull's subdivision of nine and one-half (9½)
106 acres, in the east half (E. ½) of the south west quarter (S. W. ¼) of section four (4) township thirty nine (39) north of range fourteen (14) east of the third (3rd) principal meridian: the south half (S. ½) of the north half (N. ½) of lot eleven (11) in Mackubius'

subdivision of part of the east half (E. ½) of the south west quarter (S. W. ¼) of section four (4) township thirty nine (39) north of range fourteen (14) east of the third (3rd) principal meridian. Lot three (3) in block four (4) lot seven (7) in block six (6) lot fifteen (15) in block eight (8), lot nine (9) in block fourteen (14) and lot twelve (12) in block fifteen (15) all in Rogers' subdivision of the north east quarter (N. E. ¼) of the south west quarter (S. W. ¼) of section four (4) township thirty nine (39) north of range fourteen (14) east of the third (3rd) principal meridian and lot seven (7) in John A. Yates' second (2d) re-subdivision of block forty three (43) lot twenty three (23) in the re-subdivision of block fifty eight (58) the west half (W. ½) of lot five (5) and the south half (S. ½) of lot seven (7) in block seventy six (76). The north half (N. ½) of lot fourteen (14) the south half (S. ½) of lot fourteen (14) the south half (S. ½) of lot twenty (20) and the north half (N. ½) of lot twenty one (21) all in block seventy seven (77). Lots eleven (11), twelve (12), thirteen (13) and fifteen (15) all in block seventy eight (78) and lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7) and eight (8) all in block seventy nine (79) and all in Elston's addition to Chicago, and all in said Cook county, and State of Illinois.

And whereas, the same not having been redeemed from said sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the State of Illinois, necessary to entitle him to a deed of said real estate.

Now, therefore, know ye, that I, E. F. C. Klokke, county clerk of said county of Cook, in consideration of the premises and by virtue of the statutes of the State of Illinois, in such cases provided, do hereby grant and convey unto John N. Young, his heirs and assigns forever, the said real estate hereinbefore described, subject,
107 however, to any redemption provided by law.

The following provisions of the Revised Statutes of said State of Illinois, being section 225 of chapter 120 is recited pursuant to law.

"Unless the holder of the certificate for real estate purchased at any tax sale under this act, takes the deed as entitled by law, and files the same for record within one year from and after the time for redemption expires, the said certificate or deed, and the sale on which it is based shall, from and after the expiration of such one year be absolutely null. If the holder of such certificate shall be prevented from obtaining such deed, by injunction or order of any court, or by the refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time."

Given under my hand and the seal of our court, this twelfth (12th) day of December, A. D., 1878.

[Seal County Court, Cook County, Illinois. Organized 1849.]

E. F. C. KLOKKE,
County Clerk.

STATE OF ILLINOIS, } ss:
County of Cook, City of Chicago, }

On this twelfth (12th) day of December A. D. 1878 before me J. P. Voswinkel a notary public in and for said county, personally appeared E. F. C. Klokke, county clerk of said county of Cook personally known to me to be the real person whose name is subscribed to the within deed as having executed the same, and acknowledged that he executed the same as such county clerk voluntarily and freely, for the uses and purposes therein set forth.

Given under my hand and notarial seal, the day and year aforesaid.

[Seal of John P. Vos Winkel, Notary Public, Chicago, Cook Co., Ill.]

J. P. VOS WINKEL.

No. 204,517.
Filed for record Dec. 13, A. D. 1878, at 12 m.
JAMES W. BROCKWAY, *Recorder.*

Defendant's Exhibit 2.

[Endorsed:] Copy. E. F. C. Klokke to J. Y. Young. Tax deed Dec. 12 1878 Lot 11 B. 78 Elston add'n &c. Defendant's Exhibit 2.

108 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Robert M. Simon, recorder of deeds and keeper of the records, in and for said county in the State aforesaid, do hereby certify, that the annexed is a true and correct copy of the record of a certain instrument filed in my office the seventeenth day of April, A. D., 1882, as document No. 388,290 and recorded in Book 1175, of Records at page 384.

In testimony whereof, I have hereunto set my hand and affixed my official seal at Chicago, this nineteenth day of May, A. D. 1902.

[SEAL.] ROBERT M. SIMON, *Recorder.*

Defendant's Exhibit 3.

109 STATE OF ILLINOIS, } ss:
Cook County, }

No. K. 2201.

Whereas, at a public sale of real estate for the non-payment of taxes made in the county aforesaid, on the twenty third (23d) day of October, A. D. 1879 the following described real estate was sold, to wit:

Lot eleven (11) in block seventy eight (78) in Elston addition to Chicago, situated in said Cook county and State of Illinois. And whereas, the same not having been redeemed from said sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the State of Illinois, necessary to entitle him to a deed of said real estate. Now, therefore, know ye that I, E. F. C. Klokke, county clerk of said county of Cook, in consideration of the premises, and by virtue of the statute of the State of Illinois. in such cases provided, do hereby grant and convey unto Hiram Coombs, his heirs and assigns, forever, the said real estate hereinbefore described, subject, however, to any redemption provided by law: The following provisions of the Revised Statutes of said State of Illinois being section 225 of chapter 120, is recited pursuant to law. Unless the holder of the certificate for real estate purchased at any tax sale under this act, takes out the deed as entitled by law, and files the same for record within one year from and after the time for redemption expires, the said certificate or deed, and the sale on which it is based shall from and after the expiration of such one year be absolutely null. If the holder of such certificate shall be prevented from obtaining such deed by injunction or order of any court, or by the refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time.

Given under my hand and seal of our court this first (1st) day of April, A. D. 1882.

[Seal County Court, Cook County, Illinois. Organized 1849.]

E. F. C. KLOKKE,
County Clerk.

110 STATE OF ILLINOIS, } ss:
County of Cook, City of Chicago, }

On this first (1st) day of April A D. 1882 before me, J. P. Voswinkel a notary public in and for said county, personally appeared E. F. C. Klokke, county clerk of said county of Cook, personally known to me to be the real person whose name is subscribed to the within deed, as having executed the same, and acknowledged that he executed the same as such county clerk, voluntarily and freely, for the uses and purposes therein set forth.

Given under my hand and notarial seal the day and year aforesaid.

{Seal of John P. Voswinkel, Notary Public, Chicago, Cook Co., Ill.}

J. P. VOSWINKEL,
Notary Public.

No. 388,290.
Filed for record April 17, 1882, at 3 p. m.

JAS. W. BROCKWAY, *Recorder.*

Defendant's Exhibit 3.

[Endorsed:] Copy Tax deed E. F. C. Klokke to H. Coombs Dated April 1st 1882 Lot 11 B. 78 Elston add'n. Defendant's Exhibit 3.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

113 STATE OF ILLINOIS, } ss:
County of Cook, }

County Court of Cook County, July Term, A. D. 1876.

WEDNESDAY, *August 16th, A. D.* 1876.

Court being in session.
Present: Honorable Martin R. M. Wallace judge of the county court of Cook county, Francis Agnew sheriff of Cook county.

Attest: HERMAN LIEB,
Clerk of the County Court of Cook County.

In the matter of the application of Louis C. Huck, county treasurer and *ex-officio* collector of the revenue of Cook county, for judgment for the delinquent first installment of the special assessment made and levied by the supervisor and assessor of the town of North Chicago, in said county, on property within the corporate limits of said town benefitted by the proposed improvement and enlargement of Lincoln Park within the corporate limits of said town.

This day again comes into court the said Louis C. Huck, county treasurer and *ex-officio* collector of the revenue of Cook county also comes Orrin Skinner Esquire, attorney on behalf of the commissioner of Lincoln Park and the town of North Chicago; also come the several parties owners of and interested in the several lands and lots in the foregoing list described who have heretofore severally filed objections herein to the rendition of judgment against the said lands and lots in which they are interested respectively, and the court having heard the evidence adduced and the arguments of counsel and having duly considered the same being now fully advised in the premises it is ordered by the court that the objections filed herein to the rendition of judgment against the lands and lots in said list described, opposite the description of which in said list the words "Judgment refused" appear be and the same are and each of them is hereby sustained and judgment is hereby refused as to said several lands and lots. And it is further ordered that all
114 other objections filed herein to the rendition of judgment against lands and lots in said list described be and the same are hereby overruled, and whereas due notice has been given of the intended application for a judgment against said lands and lots, and no sufficient defense having been made or course shown why judgment should not be entered against said lands and lots for the amount of the first installment of said special assessment, printer's fees and costs due and unpaid thereon; that is to say the first installment of the special assessment made and levied by the super-

(Defendant's Exhibit 4)

visor and assessor of the town of North Chicago, upon the lands and lots within the corporate limits of said town benefitted by the proposed improvement and enlargement of Lincoln Park within the corporate limits of said town, and confirmed by the circuit court of Cook county on the twenty-first day of July A. D. 1875, and printer's fees and costs due thereon except where judgment has been refused as aforesaid. Therefore it is ordered by the court that judgment be and is hereby entered against the aforesaid tract or lots of lands, or part of tracts or lots as the case may be in favor of the People of the State of Illinois except when judgment has been refused as aforesaid for the sum annexed to the description of each being the amount of the said first installment of said special assessment, printer's fees and costs due and unpaid severally thereon. And it is ordered by the court that said several tracts or lots of land, or so much of each of them as shall be sufficient to satisfy the amount of the said first installment of said special assessment, printer's fees and costs annexed to them severally, be sold as the law directs.

M. R. M. WALLACE,
County Judge.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Herman Lieb, clerk of the county court of Cook county in the State aforesaid do hereby certify that the foregoing is a correct record of the tracts, parcels of land and town lots in the town of North Chicago in the county of Cook, against which judgment was
115 entered for the first installment of the special assessment levied and assessed by authority of the supervisor and assessor of the town of North Chicago and confirmed by the circuit court of Cook county on the twenty first (21st) day of July A. D. 1875, for the improvement of Lincoln Park, together with the interest, penalties and costs, due and unpaid thereon for the year herein set forth, that is to say the first installment of the said special assessment and interest, penalties and costs due and unpaid thereon, said judgment having been entered by the county court of Cook county on the sixteenth day of August A. D. 1876, and of the orders of judgment and sale made and entered by said court on the date aforesaid.

In testimony whereof I have hereunto set my hand and affixed the seal of the county court of Cook county at Chicago in said county this twenty eighth day of August A. D. 1876.

[SEAL.]

HERMAN LIEB,
Clerk of the County Court of Cook County.

Sale closed this day Jan'y 4, 1877.

H. LIEB, *Clerk.*

116 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Philip Knopf, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing is a true copy of the process and sale record with the precept attached for the first installment of Lincoln Park assessment, in so far as said record relates to the premises described in the foregoing copy, all of which appears from the records and files in my office.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 25th day of June A. D. 1902.

PHILIP KNOPF,
Clerk of the County Court.

Defendant's Exhibit 4.

[Endorsed:] Copy. Precept for sale for first installment of Lincoln Park assessment under which sale deed was issued. J. N. Young. Lot 11 B. 78 Elston's add'n. Defendant's Exhibit 4.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

County Court of Cook County, August Term, A. D. 1879.

THURSDAY, *August* 21*st*, *A. D.* 1879.

ourt being in session.
resent as on the 13th instant.

he matter of the application of Samuel H. McCrea, county treasrer and *ex-officio* collector of the revenue of Cook county, in the tate of Illinois, for judgment for the delinquent State, county, own, school, road, city, village, park, & corporation taxes and assments levied and assessed upon the lands and lots in the county f Cook, in the State of Illinois, for the year eighteen hundred and eventy eight, and for back taxes and forfeitures to the State of llinois, together with interest, printers' fees, and costs due and npaid thereon.

And now again on this twenty first day of August A. D. 1879, the ne being one of the days of the August term A. D. 1879 of this rt, comes the said Samuel H. McCrea county treasurer and *ex-cio* collector of the revenue of Cook county aforesaid by Luther lin Mills State's attorney, Consider H. Willett, attorney for Cook nty and Francis Adams corporation counsel of the city of Chi-go, also come the several parties claiming to be owners of and in-ested in the several lands and lots in the foregoing lists described o heretofore severally filed objections herein to the rendition of dgment against said lands and lots respectively: and the court ving heard the evidence and the arguments of counsel and being ly advised in the premises thereupon it is considered and ordered the court that all objections to the rendition of judgment against e several lands and lots in the foregoing list described be and the ne are hereby overruled. And whereas due notice has been given this intended application for judgment against said lands and s and no sufficient defence having been made or cause shown why dgment should not be entered against said lands and lots for taxes, essments, interest, penalties and costs due and unpaid thereon for the years herein set forth.

0 Therefore it is considered and ordered by the court that judgment be and is hereby rendered against the lands and s aforesaid in favor of the People of the State of Illinois, for the m annexed to each, being the amount of taxes, assessments, inrest, penalties and costs due severally thereon. And it is ordered the court that the said several tracts, lots, pieces and parcels of nd or so much of them as shall be sufficient to satisfy the amount taxes, assessments, interest, penalties and costs annexed to them rerally be sold as the law directs.

It is further ordered by the court that all parties desiring to apal from this judgment file their appeal bond in the penal sum of o hundred and fifty dollars and deposit with the county treasurer

of Cook county an amount of money equal to the amount of the judgment and costs and file herein their bills of exceptions,—such deposit to be made and appeal bonds and bills of exceptions filed within twenty days from this date.

MASON B. LOOMIS,
Judge of the County Court of Cook County.

121 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Philip Knopf, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing is a true copy of the process and sale record for the general taxes of 1878 and prior years with the precept attached, in so far as said record relates to the premises described in the foregoing copy, all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the [SEAL.] city of Chicago, in said county, this 25th day of June A. D. 1902.

PHILIP KNOPF,
Clerk of the County Court.

Defendant's Exhibit 5.

[Endorsed:] Copy Precept for general taxes of 1878 and prior years under which sale deed was issued to H. Coombs L. 11 B. 78 Elston add'n. Defendant's Exhibit 5.

122 DEFENDANT'S EXHIBIT 6.

STATE OF ILLINOIS, } ss:
County of Cook, }

John N. Young of lawful age, being duly sworn, says that he resides in said county, and that he, this affiant relies upon the facts stated in this and other affidavits hereto annexed, as being in full compliance with the constitution and the revenue laws of the State of Illinois, in this behalf, and requests that a deed of the premises described in the annexed certificate of tax sale may be issued to him this affiant as provided by law.

JOHN N. YOUNG.

Subscribed and sworn to before me this 9th day of December, A. D. 1878.

[SEAL.]

F. FRENDENBERG,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

John N. Young, of lawful age, being duly sworn, says that he resides in said county, and that three months before the time for redemption of land or lot described in the annexed certificate of tax sale, from the sale set forth therein expired E. S. Taylor published in the Chicago Post, a newspaper of general circulation in said county and State, printed and published in said city of Chicago and county of Cook, a notice in which notice he stated, when he purchased the lands or lots described in the annexed certificate of tax sale, in whose name the same were taxed, the description of the land or lot so purchased at said tax sale, for what year the same were taxed or specially assessed and when the time of redemption from said sale would expire, which said notice was inserted and published in said newspaper three times, the first time not more than five months, and the last time not less than three months before the time of redemption would expire to-wit: on the 26th the 27th and the 28th days of June A. D. 1878. And deponent further says that the printed slip filed with the county clerk, being a copy of said notice, cut from one of said newspapers, and the certificate of publication thereof by the publisher of said newspaper are filed as further evidence of such publication as aforesaid, and that he, this affiant relies upon the facts stated in this and other affidavits hereto annexed, and the said certificate of publication as being in full compliance
123 with the constitution and the revenue laws of the State of Illinois, in his behalf, and requests that a deed of the premises described in the annexed certificate of tax sale may be issued to John N. Young as provided by law.

JOHN N. YOUNG.

Subscribed and sworn to before me this 9th day of December A. D. 1878.

[SEAL.] F. FRENDENBERG,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

John N. Young, of lawful age being duly sworn, says that he resides in said county, and that three months before the time for redemption of land or lot described in the annexed certificate of tax sale, from the sale set forth therein expired, he published in the Chicago Daily Telegraph, a news paper of general circulation in said county and State, printed and published in said city of Chicago and county of Cook, a notice, in which notice he stated, when E. S. Taylor, purchased the lands or lots described in the annexed certificate of tax sale, in whose name the same were taxed the description of the land or lot so purchased, at said tax sale, for what year the

same were taxed or specially assessed and when the time of redemption from said sale would expire, which said notice was inserted and published in said newspaper three times, the first time not more than five months, and the last time not less than three months before the time of redemption would expire to-wit: on the 15th the 16th and the 17th days of July A. D. 1878. And deponent further says that the printed slip filed with the county clerk, being a copy of said notice, cut from one of said newspapers, and the certificate of publication thereof by the publisher of said newspaper are filed as further evidence affiant relies upon the facts stated in this and other affidavits hereto annexed and the said certificate of publication as being in full compliance with the constitution and the revenue laws of the State of Illinois, in this behalf, and requests that a deed of the premises described in the annexed certificate of tax sale may be issued to John N. Young, as provided by law.

JOHN N. YOUNG.

Subscribed and sworn to before me this 27th day of November A. D. 1878.

[SEAL.] EDWARD S. DREYER,
Notary Public.

124 STATE OF ILLINOIS, } ss:
County of Cook, }

John N. Young of lawful age, being duly sworn, says that he resides in said county, and that three months before the time for redemption of land or lot described in the annexed certificate of tax sale, from the sale set forth therein expired A. McLaughlin published in the Chicago Daily Telegraph a newspaper of general circulation in said county and State, printed and published in said city of Chicago and county of Cook, a notice in which notice he stated, when E. S. Taylor, purchased the lands or lots described in the annexed certificate of tax sale, in whose name the same were taxed, the description of the land or lot so purchased at said tax sale, for what year, the same were taxed or specially assessed and when the time of redemption from said sale would expire, which said notice was inserted and published in said newspaper three times the first time not more than five months, and the last time not less than three months before the time of redemption would expire to.wit: on the 6th the 7th and the 8th days of August, A. D. 1878. And deponent further says that the printed slip filed with the county clerk, being a copy of said notice, cut from one of said newspapers, and the certificate of publication thereof by the publisher of such publication as aforesaid, and that he, this affiant relies upon the facts stated in this and other affidavits hereto annexed, and the said certificate of publication as being in full compliance with the constitution and the revenue laws of the State of Illinois, in this behalf, and requests that a deed of

the premises described in the annexed certificate of tax sale may be issued to John N. Young, as provided by law.

JOHN N. YOUNG.

Subscribed and sworn to before me this 9th day of December, A. D. 1878.

[SEAL.]

F. FRENDENBERG,
Notary Public.

125 STATE OF ILLINOIS, } ss:
County of Cook, }

John N. Young of lawful age, being duly sworn, says that he resides in said county, and that three months before the time for redemption of land or lot described in the annexed certificate of tax sale, from the sale set forth therein expired, he published in the Chicago Daily Telegraph a newspaper of general circulation in said county and State, printed and published in said city of Chicago and county of Cook, a notice in which notice he stated, when E. T. Taylor, purchased the land or lot described in the annexed certificate of tax sale, in whose name the same was taxed, the description of the land or lot so purchased at said tax sale, for what year the same was taxed or specially assessed and when the time of redemption from said sale would expire, which said notice was inserted and published in said newspaper three times, the first time not more than five months and the last time not less than three months before the time of redemption would expire, to-wit: on the 25th the 26th and the 27th day of July A. D. 1878, And deponent further says that the printed slip filed with the county clerk, being a copy of said notice, cut from one of said newspapers, and the certificate of publication thereof by the publisher of said newspaper, are filed as further evidence of such publication as aforesaid, and that he, this *of said newspaper, are filed as further evidence of such publication aforesaid, and that he this* affiant relies upon the facts stated in this and other affidavits hereto annexed, and the said certificate of publication as being in full compliance with the constitution and the revenue laws of the State of Illinois, in this behalf, and requests that a deed of the premises described in the annexed certificate of tax sale may be issued to John N. Young—as provided by law.

JOHN N. YOUNG.

Subscribed and sworn to before me this 9th day of December A. D. 1878.

[SEAL.]

F. FRENDENBERG,
Notary Public. Not. Publ.

126 STATE OF ILLINOIS, } ss:
County of Cook, }

George B. Quigg, of lawful age, being duly sworn says: That he resides in said county, and is the agent of E. S. Taylor, that as such

agent, deponent on the 19th day of February A. D. 1878, visited the lot or land described in the annexed notice for the purpose of serving said notice on the occupant or person in possession of said premises and found the land or lot mentioned in said notice vacant and unoccupied and no person in possession thereof three months before the expiration of the time of redemption from the sale mentioned in said notice to wit the 15 day of November 1878. Deponent further says he is unable to find Geo. T. Harding in whose name said lot is assessed.

GEORGE B. QUIGG.

Sworn to this 7th day of May A. D. 1878, before me

[SEAL.] F. FRENDENBERG,
Notary Public.

Notice of Sale for Special Assessment.

To —— —— or whom it may concern:

This is to notify you, that on the 15th day of November, 1876, the undersigned purchased at a sale of lots and lands for taxes and special assessments, authorized by the laws of the State of Illinois the following described real estate, to-wit: Lot 11, in block 78, Elston's addition to Chicago, of section — in township — north range — east of the third principal meridian, taxed or specially assessed for the year 1875, for the first installment of the special assessment for the improvement and enlargement of Lincoln Park, in name of Geo. T. Harding, and that the time of redemption thereof from said sale will expire on the 15th day of November, 1878.

E. S. TAYLOR,
Room 8 Ashland Block, Chicago,
N. E. Cor. Clark & Randolph Sts.

127 *First Installment.*

Lincoln Park assessment.

Certificate of Sale.

No. 895. Volume 27. Page 68.

STATE OF ILLINOIS, } ss:
Cook County, }

This is to certify, that at the July term, A. D. 1876, of the county court of said Cook county, on the application of Louis C. Huck, county treasurer and *ex-officio* collector of the revenue of the county of Cook, in the State of Illinois, for judgment for the delinquent first install-

ment of the special assessment which was made by the supervisor and assessor of the town of North Chicago, for the improvement and enlargement of Lincoln Park, in said town, and confirmed by the circuit court of Cook county, and returned delinquent and unpaid by Louis C. Huck, treasurer and *ex-officio* collector of the revenue of the county of Cook, pursuant to law, a judgment was entered against the following described lands or lots, for so much of the said first installment of said special assessment as was found to be due thereon and costs being for the sum of eight dollars and 94 cents, as follows, to-wit:

Amount of first installment	$8.54
Costs	.40
Total	$8.94

And in and by said judgment it was ordered by said court that said lands or lots, or so much thereof as should be sufficient to satisfy the amount of said judgment, be sold as the law directs, to-wit: sub-lot — lot 11, block 78, in Elston's addition to Chicago, section — town — range — east of the third principal meridian, situated in said Cook county.

And that in pursuance of the statute in such case made and provided, process was issued to said treasurer and *ex-officio* collector of said county, to sell said lands or lots, or so much thereof as
128 should be necessary to satisfy the said judgment that by virtue of said process said collector did on the 28th day of August A. D. 1876, open the sale upon said process, and said sale being duly continued from day to day by adjournments duly announced, and the same being reached in its order, said collector did this day offer for sale, and did sell, so much of said lands or lots as would pay the sum aforesaid, and that E. S. Taylor, became the purchaser of the whole of said lands or lots, and paid thereon the sum aforesaid that being the least quantity of said lands or lots for which any person would pay the said amount, due thereon.

Now, therefore, in case the said lands or lots above sold are not redeemed, in manner and form as the law directs, within two years from the date hereof, the said purchaser, his heirs or assigns, will be entitled to receive a deed of the lands or lots above sold, as by law directed. Unless the holder of this certificate takes out the deed, as entitled by law, and files the same for record within one year from and after the time for redemption expires, then this certificate shall, from and after the expiration of such one year be absolutely null. If the holder of this certificate shall be prevented from obtaining a deed by injunction or order of any court, or by refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time.

In witness whereof, I have hereunto subscribed my name and

affixed the seal of said county court, at Chicago, in said county this 15th day of November, A. D. 1876.

HERMAN LIEB,
Clerk of the County Court.

Countersigned:
[SEAL.] L. C. HUCK,
Treasurer and Ex-officio Collector of Cook County.

No. —.
(Endorsed on back:) First installment Lincoln Park assessment No. —, of ——, 1875. Without recourse E. S. Taylor.

129 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Philip Knopf, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that the foregoing is a true copy of the application, affidavits and notices together with the sale certificate upon which tax deed No. K 330 was issued to John N. Young December 12th A. D. 1878 by E. F. C. Klokke county clerk in so far as said deed relates to the premises described in the foregoing copy all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 26th day of June, A. D. 1902.
[SEAL.]

PHILIP KNOPF,
Clerk of the County Court.

[Endorsed:] Copy Application for tax deed, affidavits and notice together with sale certificate. Pre-requisites to tax deed issued to John N. Young Lot 11 B. 78 Elston's add'n Defendant's Exhibit 6.

130 DEFENDANT'S EXHIBIT 7.

Advertising Application.

STATE OF ILLINOIS, } ss:
County of Cook, }

Hiram Coombs, of lawful age, being duly sworn, says that he resides in said county, and that three months before the time for redemption of the land—or lot—described in the annexed certificate of tax sale, from the sale set forth therein expired, he published in the Chicago Evening Journal, a newspaper of general circulation in said county and State, printed and published in said city of Chicago and county of Cook, a notice, in which notice he stated when he did purchase the land or lot described in the annexed certificate of tax

sale, in whose names the same was taxed, the description of the land or lot so purchased at said tax sale, for what years the same was taxed, or specially assessed and when the time of redemption from said sale would expire.

Which said notice was inserted and published in said newspaper three times, the first time not more than five months, and the last time not less than three months before the time of redemption would expire, to-wit: on the 25th, the 26th, and the 27th days of May, A. D. 1881. And deponent further says that the printed slips filed with the county clerk, on twelfth day of October, A. D. 1881, being a copy of said notice, cut from one of said newspapers, and the certificate of publication thereof as aforesaid by the publisher of said newspaper are filed as further evidence of such publication as aforesaid: and that he this affiant relies upon the facts stated in this and other affidavits hereto annexed, and the said certificate of publication as being in full compliance with the constitution and the revenue laws of the State of Illinois in this behalf, and particularly that all the conditions of section 216, of an act of the legislature of the State of Illinois, entitled, "An act for the assessment of property and for the levy and collection of taxes;" approved March 30th, 1872, and in force July 1st, 1872, have been strictly complied with and requests that a deed of the premises described in the annexed certificate of tax sale may be issued to Hiram Coombs, this affiant as provided by law.

HIRAM COOMBS.

Subscribed and sworn to before me this 28th day of February A. D. 1882.

EDWIN DRURG,
Notary Public.

[SEAL.]

131 *Affidavit—Occupant Served.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Wm. R. Morley, of lawful age, being duly sworn says that he resides in said county, and is the agent of Hiram Coombs, that as such agent, deponent, on the 28th day of June A. D. 1881, being at least three months before the expiration of the time of redemption on the sale mentioned in annexed notice; served a notice, of which the annexed notice is a true copy on P. O'Brien, by handing the same to and leaving the same with him personally at Chicago, in said county.

Deponent is acquainted with the land and lot mentioned in said notice, and the person so served was the only person in actual possession or occupancy of said land or lot, on the 28th day of June A. D. 1881.

WM. R. MORLEY.

Sworn to this 30th day of July, A. D. 1881, before me
EDWIN DRURY,
Notary Public. [SEAL.]

Affidavit—Assesse- Served.

Vol. 3, page 199.

STATE OF ILLINOIS, }
County of Cook, } ss:

C. O. P. Scott, of lawful age being duly sworn, says that he resid in said county, and is the agent of Hiram Coombs, that as suc agent deponent served a notice of which the annexed notice is true copy, on Geo. F. Harding, by handing the same to and leavin the same with Geo. F. Harding, personally at Chicago, 170 Madiso St., in said county on the 9th day of June, A. D. 1881, being at lea three months before the expiration of the time of redemption o the sale mentioned in said notice and the said land or lot describe in said notice was taxed in the name of said Geo. F. Harding fo the years A. D. 1875, 1876, 1877, 1878, and on city taxes for th year A. D. 1874.

C. O. P. SCOTT.

Sworn to this 23rd day of February A. D. 1882, before me
EDWIN DRURY,
Notary Public. [SEAL.]

132 *Notice of Sale for Tax.*

To Geo. F. Harding or whom it may concern:

This is to notify you that on the 23rd day of October A. D. 1879 H. Coombs purchased at a sale of lots and lands for taxes, author ized by the laws of the State of Illinois, the following described real estate situated in the county of Cook and State of Illinois, taxed in the name of Geo. F. Harding for the years A. D. 1875, 1876, 1877 and 1878, and in the name of Geo. F. Harding on city taxes for the year A. D. 1874 and in the name of —— —— for the year A. D. 187–, and in the name of —— —— for the year 187–, and in the name of —— —— for the year A. D. 187–, to wit: lot 11 in block 78, Elston's addition to Chicago, of section — in township — north range — east of the third principal meridian, for the taxes levied and assessed thereon for the years A. D. 1875, A. D. 1876—A. D. 1877,—A. D. 1878—, and city taxes of A. D. 1874, and that the time of redemption thereof from said sale will expire on the 23rd day of October A. D. 1881.

HIRAM COOMBS.

Redemption may be made at the office of the county clerk.

State, County, and City—Certificate of Sale for Taxes of A. D. 1878, &c.

No. 21225. Volume 33. Page 29.

STATE OF ILLINOIS, } *ss:*
Cook County, }

This is to certify, that at the June term, A. D. 1879, of the county court of said Cook county, on the application of Samuel H. McCrea, county treasurer and *ex-officio* collector of the revenue of Cook county, for judgment for the delinquent State, county, city, town park, boulevard and park taxes, and special assessments,
133 levied and assessed upon the lands and lots in the county of Cook and State of Illinois, for the year 1878, and for judgment for the amount for which said lands and lots had been previously forfeited to the State of Illinois and remained due and unpaid on the first day of November, A. D. 1878, together with printers' fees, interest at ten per cent., and back taxes, and costs remaining due and unpaid thereon, and return delinquent and unpaid by the town collector of State and county taxes for said several years, pursuant to law, a judgment was entered against the following described lands or lots, for so much of the said taxes and special assessments, and the amount for which the same were forfeited to the State, as aforesaid as were found to be due thereon, and costs, being for the sum of three hundred and fifty dollars and 56 cents as follows to-wit:

Taxes, etc., A. D. 1878	$53.68
Aggregate amount due on forfeiture at tax sale for taxes of A. D. 1877	296.35
Back taxes, 1877	
" " 187–	
" " 187–	
Costs	.53
Total	350.56

and in and by said judgment it was ordered by said court, that said lands or lots, or so much thereof as should be sufficient to satisfy the amount of said judgment, be sold as the law directs, to-wit: Sub lot — lot 11, block 78 in Elston add'n to Chicago, section — town — N. range — east of the third principal meridian, situated in said Cook county.

And that, in pursuance of the statute in such case made and provided, process was issued to said treasurer and *ex-officio* collector of said county, to sell said lands or lots, or so much thereof as should be necessary to satisfy the said judgment. That by virtue of said

process, said collector did, on the 21st day of July, A. D. 1879, o
the sale upon said process, and said sale being duly continued fr
day to day by adjournments duly announced, and the sa
134 being reached in its order, said collector did this day o
for sale, and did sell, so much of said lands or lots as wo
pay the sum aforesaid; and that H. Coombs, became the purcha
of the whole of said lands or lots, and paid thereon the sum afo
said, that being the least quantity of said lands or lots for wh
any person would pay the said amount due thereon.

Now, therefore, in case the said lands or lots above sold are
redeemed, in manner and form as the law directs, within two ye
from the date hereof, the said purchaser, his heirs or assigns, w
be entitled to receive a deed of the lands or lots above sold, as
law directed. Unless the holder of this certificate takes out t
deed, as entitled by law, and files the same for record within o
year from and after the time for redemption expires, then this cert
cate shall, from and after the expiration of such one year, be ab
lutely null. If the holde · of this certificate shall be prevented fro
obtaining a deed by injunction or order of any court, or by refus
of the clerk to execute the same, the time he is so prevented shall
excluded from the computation of such time.

In witness whereof, I have hereunto subscribed my name a
affixed the seal of said county court, at Chicago, in said county, th
23rd day of October A. D. 1879.

E. F. C. KLOKKE,
Clerk of the County Court.

[SEAL.]

Countersigned.

S. H. McCREA,
Treasurer and Ex-officio Collector of Cook County.

(Endorsed on back.)

No. K 2201.

No. — State, county and city taxes and assessments of 187
and other years Recorded doc., record — page —

For a valuable consideration I hereby sell, endorse, assign, transfe
and set over the within certificate to —— —— this — day
—— 18— without recourse H. Coombs.

The public records will show this land as sold for taxes until yo
file this paper at the county clerk's office, Chicago.

Filed and deed issued to Hiram Coombs April 1st A. D. 1882.

E. F. C. KLOKKE,
County Clerk.

135 STATE OF ILLINOIS, }
County of Cook, } ss:

I, Philip Knopf, clerk of the county court of Cook county, in the
State aforesaid, do hereby certify that the foregoing is a true copy o
the application affidavits and notices together with the sale certifi

cate upon which tax deed No. K 2201 was issued to Hiram Coombs April 1st A. D. 1882 by E. F. C. Klokke county clerk, in so far as said deed relates to the premises described in the foregoing copy all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 25th day of June A. D. 1902

[SEAL.] PHILIP KNOPF,
Clerk of the County Court.

Defendant's Exhibit 7.

[Endorsed:] Copy Application for deed and affidavits and notices together with sale certificate upon which tax deed No. K 2201 was issued to H. Coombs Apr. 1st 1882. Lot 11 B. 78 Elston's add'n Defendant's Exhibit 7

DEFENDANT'S EXHIBIT 8.

136 SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That Henry Mansfield, Nathaniel S. Tucker Reuben Rowley, A. L. Merriman and Julius Manning, and such persons as shall become subscribers to the capital stock hereinafter mentioned, be and they hereby are created a body politic and corporate, by the style and name of the "Peoria Starch Manufacturing Company;" and by that name they and their successors shall have perpetual succession, and shall be capable of suing and being sued, pleading and being impleaded, answering and being answered unto, in all courts of law or equity; to have and to use a common seal, and alter the same at their pleasure; to make, amend, alter or revoke by-laws, for the government of said company; to hold and dispose of, in any manner, real estate and any personal property of any description, whether acquired by purchase or otherwise, to manufacture starch or any other thing; to purchase and use all materials for such manufacture, or to procure the same by barter or exchange; to vend such starch, so manufactured, and such material or other species of personal goods and effects, if by said company deemed expedient; and generally to do and perform all other proper and needful acts as done by corporations.

2. The capital stock of said company shall not be less than forty thousand dollars, nor more than two hundred and fifty thousand dollars; which may be fixed and charged, within these limits, by the said company, at any time, and which shall be divided into shares of one hundred dollars each.

3. As soon as forty thousand dollars of the said capital stock are subscribed the said company may be organized, by the election of one president, one secretary, and three or more directors; whose election shall be certified by the above named persons, or a majority of them, in the book of said company.

4. At the first or any other meeting of the stockholders they may ordain and establish such by-laws, rules and regulations, as they may deem proper, for the government and management of
137 the affairs of the said company.

5. Said corporation may provide, by its bylaws, for its meeting of stockholders, its officers, their powers and duties, and the terms of its several officers, and the manner of conducting its affairs and business, and the mode and manner of transferring its stock: *Provided* said bylaws shall not be in conflict with the laws or constitution of this State or of the United States. Copies of the minutes, bylaws and records of said company, certified to be such by the president of said company, with or without the corporate seal of said company attached; shall be received as *prima facie* evidence of the facts therein appearing, in all courts.

6. All the stockholders of said company shall be severally and individually liable to the creditors of said company, to an amount equal to the amount of stock held by them, respectively, for all debts of said company, and all contracts made by said company, until the whole amount of capital stock fixed and held by said company shall have been paid in, and a certificate thereof shall have been made and recorded, as is prescribed in the following section. And the capital stock so fixed and limited shall all be paid in, one-half within one year and the other half within two years from the incorporation of said company, or such corporation shall be dissolved.

Approved Feb. 11, 1857.

Defendant's Exhibit 8.

138 And the foregoing was all the evidence offered or admitted or refused or considered by the court in said cause or in the trial thereof.

On Monday, at 10 a. m., July 9, 1902, again came the said parties before said court in said cause, and be it further remembered that the propositions of law submitted to the court, in behalf of the defendant with request that they be severally held as the law in said cause and so marked by the court were the following,—as severally marked either "held" or "refused" by the court—namely:—

(1.) In this case, the burden is on the plaintiff to prove the material allegations of the declaration by a preponderance of the evidence. (Held.)

(2.) One of the allegations of the declaration essential to be proven is the fact of ownership of the property described in the declaration, by the defendant, as alleged in the declaration. (Held.)

(3.) The deed of George F. Harding to the Chicago Real Estate Loan & Trust Company, shown in evidence, was a valid and sufficient conveyance of all interest of the grantor at the time of
139 the making of the deed in or to the property described in the declaration. (Held.)

(4.) The mere fact that this property continued to be assessed in the name of George F. Harding is not sufficient to show a re-vesting of any title or interest in or to the said property in said Harding subsequent to the making of the deed by him to the Chicago Real Estate Loan & Trust Company. (Held.)

(5.) The objections to judgment filed in the county court offered in evidence are not sufficient to show a re-vesting of any title or interest in or to said property in said George F. Harding subsequent to the making of the deed by him to the Chicago Real Estate Loan & Trust Company. (Held.)

(6.) In this case, the burden is on the plaintiff to show by preponderance of the evidence a re-vesting of title or interest in George F. Harding in or to the said property subsequent to the making of the deed by him to the Chicago Real Estate Loan & Trust Company. (Held.)

(7.) In this case, the proof does not show a re-vesting of any title or interest in or to said property in said George F. Harding subsequent to the making of the deed by him to the Chicago Real Estate Loan & Trust Company. (Refused.)

(8.) In this case, the plaintiffs have failed to prove the material averments of their declaration by a preponderance of the evidence. (Refused.)

(9.) Under the evidence in this case, the finding of the court should be for the defendant. (Refused.)

(10.) Under the evidence in this case, the court should find the issues for the defendant. (Refused.)

140 (11.) The burden having devolved upon the plaintiff to affirmatively prove a re-vesting of title or interest in or to the property described in the declaration in George F. Harding subsequent to the making of the conveyance by him to the Chicago Real Estate Loan & Trust Company, the checks and receipts in evidence, together with endorsements thereon and the testimony in regard thereto, are not sufficient to show such re-vesting of title or interest in said Harding. (Held.)

(12.) It appearing from the charter of the Peoria Starch Manufacturing Company admitted in evidence, together with the admission of the fact that the name of that company was duly changed to the Chicago Real Estate Loan & Trust Company, that said last named company had the right and the power under the law to hold real estate at the time of the conveyance made to it by George F. Harding, the right of the said company to hold and own the property described in this declaration can not be questioned in this present proceeding. (Held.)

NOTE.—In support of the last above proposition of law, the following quotation from opinion of appellate court of first district of Illinois, filed May 23d, 1902, in the case of Springer *vs.* The Chicago Real Estate Loan & Trust Company, is submitted, namely: "If a corporation has power to hold real estate for any purpose, a deed to it passes the title of the grantor; and whether it exceeded its power

in accepting the conveyance is a question which can only be raised by the State. Cooney *vs.* Booth Packing Co., 169 Ill., 370."

141 And the court held as law the said propositions of law marked "Held" and refused to hold as law in said cause the said several propositions of law marked "Refused," as above shown. And to each and every refusal of the court to hold as law the said several propositions, the defendant then and there duly excepted.

And the foregoing were all the propositions of law submitted to the court or requested by either party to be held as law, or held or refused by the court in said cause.

Thereupon the court found the issues for the plaintiff in said cause as shown by the record in this cause which is hereby referred to and made a part of this bill of exceptions, to which finding and every part thereof the defendant then and there duly excepted.

Thereupon the defendant moved the court in writing, filed in said cause, to set aside said finding and grant a new trial in said cause, together with a written statement of points in support of said motion, which motion and statement of points were and are in words and figures as follows, namely:

142 STATE OF ILLINOIS, } *ss.:*
County of Cook, }

In the Circuit Court Thereof, June Term, A. D. 1902.

THE PEOPLE OF THE STATE OF ILLINOIS } Gen'l No. 216,038, Term
vs. } No. —. In Debt.
GEORGE F. HARDING. }

Motion of Defendant for New Trial, etc.

Now comes defendant in the above entitled cause, by Wm. J. Ammen, his attorney, and moves the court to set aside the finding entered herein against him and grant a new trial in said cause, and as grounds of said motion the defendant submits herewith his statement of points, which statement of points is hereby referred to and made a part of this motion.

WM. J. AMMEN,
Attorney for Defendant.

143 *Statement of Points in Support of the Foregoing Motion.*

1. The court admitted improper and incompetent evidence by counsel for plaintiff against the objections of counsel for defendant.

2. The court improperly overruled the objections of defendant to evidence offered for plaintiff; and erred in not admitting the tax

deeds offered, together with the documentary evidence in support thereof.

3. The court refused to admit proper and material and competent evidence offered in behalf of defendant.

4. The court improperly refused to permit the defendant to testify in answer to questions put to him by his counsel that he, the defendant, had acquired no interest whatsoever in or to the real estate described in the declaration since the date of the conveyance by the defendant to the Chicago Real Estate Loan & Trust Company admitted in evidence.

5. The court erred in rejecting defendant's offer of proof that he, the defendant, had received no conveyance of any right, title, interest, claim or demand in or to the said real estate since the date of the said conveyance by him to the Chicago Real Estate Loan & Trust Company.

6. The court erred in not permitting defendant to show, pursuant to the offer of his counsel, that he, the defendant, had acquired no right, title or interest in or to the said real estate described in said declaration since the date of the said conveyance by him to the Chicago Real Estate Loan & Trust Company as admitted in evidence.

144 7. The court erred in not permitting defendant to show that the objections to judgment filed in the county court, offered in evidence and admitted against the objections of the defendant, were filed in said county court in the form in which they appear without the direction or knowledge of the defendant herein so far as their form was concerned, and the court erred in not permitting the defendant to show that the reference in such objections to the objectors joining therein as owners or parties interested in the real estate described in said objections was inserted only for the reason that different parts of the said property described in the objections were owned or claimed by objectors, and for the reason that the attorney for the defendant in said county court proceedings gave directions for the preparation of such objections by his clerk or assistant and told said clerk or assistant as a part of such directions that it was not necessary to specify in such objections what particular pieces of property were owned or claimed by the said objectors severally.

8. The court erred in admitting in evidence the said objections filed in the county court against the objections of defendant.

9. The court erred in admitting the checks against the objections of defendant.

10. The court erred in admitting the alleged receipts for rent against the objections of defendant.

11. The court erred in admitting the alleged deposit slips against the objections of defendant.

12. The court erred in admitting the testimony of G. A. Malcolm in relation to the said checks and alleged receipts.

145 13. The court erred in admitting the testimony of R. B. Feasley in relation to the said deposit slips and checks.

14. The court erred in overruling the motion of defendant to exclude the objections filed in the county court.

15. The court erred in overruling the motion of defendant to exclude said checks and said alleged receipts.

16. The court erred in overruling the motion of defendant to exclude the said deposit slips.

17. The rulings of the court admitting evidence against objections of defendant or denying defendant's motion for exclusion of evidence were severally erroneous.

18. The rulings of the court rejecting evidence offered by or in behalf of defendant were severally erroneous.

19. The court erred in refusing propositions of law submitted in behalf of the defendant.

20. The refusals of the court to hold as the law the propositions of law submitted in behalf of the defendant were severally erroneous.

21. Each refusal of the court to hold as the law the several propositions of law submitted in behalf of the defendant was erroneous.

22. The finding of the court was and is contrary to the evidence.

23. The finding of the court was and is severally contrary to the law.

24. The finding of the court was and is contrary to the law as held by the court.

146 25. The statute under which this action is prosecuted is contrary to the constitution of Illinois.

26. The statute under which this action is prosecuted is contrary to the Constitution of the United States.

27. This proceeding under said statute is a taking of property without due process of law and otherwise unconstitutional.

28. The court erred in not requiring the counsel appearing for the plaintiff to prove authority for the bringing and prosecution of this suit.

29. The court erred in finding the issues for the plaintiff.

30. The court otherwise erred in said cause.

Wherefore the defendant prays that this court set aside its finding against the defendant herein, and grant a new trial; and the defendant will ever pray, etc.

WM. J. AMMEN,
Attorney for Defendant.

"Filed July 7, 1902.
JOHN A. COOKE, *Clerk.*"

147 And thereupon the court overruled the said motion above shown, to which ruling and action of the court the defendant then and there duly excepted.

And thereupon the court entered its judgment on said finding in said cause as shown by the record therein, to which judgment and every part thereof the defendant then and there duly excepted.

And inasmuch as the foregoing matters and things do not other-

wise fully appear of record in said cause, the defendant presents this his bill of exceptions in said cause, and asks that the same be signed, sealed, filed, and made a part of the record in said cause, which is accordingly done on the 24th day of September, 1902, as of July 7, 1902.

CHARLES G. NEELY,
Judge of said Circuit Court. [SEAL.]

"O. K.
R. S. ILES,
R. D. MARTIN,
STILLMAN B. JAMIESON,"
Att'ys for Pl't'f.

148 Be it remembered that heretofore, to-wit, on the 18th day of July, A. D. 1902, a certain appeal bond was filed in the office of the clerk of said court, in words and figures following, to wit:—

Know all men by these presents, that we, George F. Harding and Abner C. Harding, of the county of Cook and State of Illinois, are held and firmly bound unto the People of the State of Illinois, also of the same county and State in the penal sum of three thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally and firmly, by these presents.

Witness our hands and seals, this 14th day of July, A. D. 1902.

The condition of the above obligation is such, that whereas, the said The People of the State of Illinois did, on the 7th day of July, A. D. 1902, in the circuit court of Cook county, in the State aforesaid, and of the June term thereof, A. D. 1902, recover a judgment against the above bounden George F. Harding for the sum of two thousand one hundred twenty-three dollars and five cents, besides costs of suit; from which said judgment of the said circuit court of Cook county, the said George F. Harding has prayed for and obtained an appeal to the supreme court of said State.

Now therefore, if the said George F. Harding shall duly prosecute his said appeal with effect, and moreover pay the amount of the judgment costs, interests and damages rendered, and to be
149 rendered, against him in case the said judgment shall be affirmed in said supreme court, then the above obligation to be void, otherwise to remain in full force and virtue.

GEORGE F. HARDING. [SEAL.]
ABNER C. HARDING. [SEAL.]

Approved in open court.
CHARLES G. NEELY, *Judge.*

Gen. No. 216038. Term No. 15433. Circuit court of Cook county. Copy. The People of the State of Illinois *vs.* George F. Harding. Appeal bond. Filed July 18, 1902. John A. Cooke, clerk.

150 STATE OF ILLINOIS, } ss:
County of Cook, }

Wm. J. Ammen, Abner C. Harding and Albert B. Joyner, being first duly sworn, do severally state each under his several oath, that they and each of them are thoroughly familiar with the handwriting and signature of the within named George F. Harding defendant in the within named suit and principal in the within bond, and affiants further state under their several oaths aforesaid that the first signature to the within bond is the true and genuine signature of said George F. Harding and the second of said signatures of the within bond is the true and genuine signature of one of these affiants Abner C. Harding. Further these affiants say not.

Dated this July, 1902.

(Signed) WM. J. AMMEN.
ABNER C. HARDING.
ALBERT B. JOYNER.

Subscribed and sworn to before me this 18th day of July, 1902.

(Signed) JOHN A. COOKE, *Clerk.*

STATE OF ILLINOIS, } ss:
Cook County, }

I, John A. Cooke, clerk of the circuit court of Cook county, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete transcript of the record in a certain cause lately pending in said court, on the law side thereof, between People of the State of Illinois, *ex rel.* etc. and George F. Harding, defendant.

[SEAL.] 151 In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 29th, day of September, 1902.

JOHN A. COOKE, *Clerk.*

In the Supreme Court of Illinois, October Term, A. D. 1902.

GEORGE F. HARDING, Appellant, } Appeal from Circuit Court of
vs. Cook County.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee. }

Assignment of Errors.

Now comes the appellant herein by Wm. J. Ammen, his attorney, and says that by the foregoing record the said circuit court of Cook county is shown to have erred as follows.

1. In the admission of improper evidence against the objections of the defendant.

2. In the rejection and exclusion of proper evidence offered in behalf of defendant.

3. The admissions of evidence against the objections of defendant and rejection of evidence in behalf of the appellant were severally erroneous.

4. Said court erred in finding the issues for the plaintiff.

5. Said court erred in overruling the motion of the de-
152 fendant to set aside the finding and grant a new trial in said cause.

6. Said court erred in rendering and entering judgment against the defendant.

7. Said court erred in its several refusals of propositions of law offered by the defendant.

8. Each refusal of the said court to hold as law the propositions of law offered by the defendant was erroneous.

9. The finding and judgment of the court were severally contrary to the evidence.

10. The finding and judgment of the court were severally contrary to the law.

11. The finding and judgment of the court were erroneous for the several reasons stated in the points filed in support of the motion to set aside the finding and grant a new trial.

12. The court erred in its denial of the several motions of defendant to exclude evidence.

13. The denials of the motions of the defendant were severally erroneous.

14. The court otherwise erred in said cause, as shown by the record.

WM. J. AMMEN,
Attorney for Appellant.

153 And afterwards, to-wit: on the 18th day of October, A. D. 1902, certain proceedings were had in said court and entered of record, among which is the following, viz:

GEORGE F. HARDING
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } 2797. Appeal from Cook.

And now comes the appellee by counsel and moves the court for an extension of time to file briefs of appellee.

And afterwards, to-wit: on the 20th day of October, A. D. 1902 certain proceedings were had in said court, and orders made and entered of record, among which is the following, viz:

GEORGE F. HARDING
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } 2797. Appeal from Cook.

And now on this day the court having duly considered the motion of appellee for time to file briefs and being fully advised in the premises, it is considered by the court that the time for filing appellee's briefs herein be extended to the 25th of October, and that appellant have until November 4th to reply.

And afterwards, on the twenty-third day of October, A. D. 1902, certain proceedings were had in said court, and orders made and entered of record, among which is the following, viz:

154 GEORGE F. HARDING
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } 2797. Appeal from Cook.

Now on this day come the parties hereto, and this being done one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant, hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be and the same is hereby taken under advisement.

155 At a supreme court, begun and held at Springfield on Tuesday, the third day of February, in the year of our Lord one thousand nine hundred and three, within and for the State of Illinois.

Present: Benjamin D. Magruder, chief justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; John P. Hand, justice; James B. Ricks, justice; Howland J. Hamlin, attorney general; B. H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, towit, on the eighteenth day of February, A. D. 1903, the same being one of the days of the term of court aforesaid, the following proceedings were by said court, had and entered of record, to-wit:

GEORGE F. HARDING
v.
THE PEOPLE OF THE STATE OF ILLINOIS. } No. 2797. Error to Cook.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error: Therefore it is considered by the court, that the judgment aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error, and it is further considered by the court, that the said appellees recover of and from the said appellant their costs by them in this behalf expended, and that they have execution therefor:

156 At a supreme court, begun and held at Springfield on Tuesday, the third day of February, in the year of our Lord one thousand nine hundred and three, within and for the State of Illinois.

Present: Benjamin D. Magruder, chief justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; John P. Hand, justice; James B. Ricks, justice; Howland J. Hamlin, attorney general; Benjamin H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that afterwards, to-wit, on the eighteenth day of February, 1903, the opinion of the court was filed in the words and figures following, to-wit:

GEORGE F. HARDING
vs.
THE PEOPLE. } No. 2797. Error to —. Appeal from Cook.

157 Docket No. 2797, Ag. No. 122, Oct., 1902.

GEORGE F. HARDING
v.
THE PEOPLE.

Mr. JUSTICE WILKIN delivered the opinion of the court:

This is an action of debt by the People, against George F. Harding, appellant, begun in the circuit court of Cook county to recover the general taxes for the years 1897, 1898, 1899 and 1900, as-

sessed and levied against lot 11, in block 87, Elston's addition to Chicago. The proceeding is brought under section 230 of chapter 120. (3 Starr & Cur. Stat., p. 3501.) Upon a hearing before the circuit court without a jury, judgment was rendered for the plaintiff for the sum of $2123.05, from which the defendant prosecutes an appeal to this court.

The chief error urged by appellant is that the plaintiff failed to prove that George F. Harding was the owner of the property against which the taxes were assessed. The record shows that the plaintiff offered in evidence a certified copy of the collector's warrants of 1897, 1898, 1899 and 1900, the tax judgment, sale, redemption and forfeiture record for the year 1899, showing the forfeiture of the premises in question for that year and prior years, as entered in the year 1900 for the taxes of 1899. Section 230, *supra*, provides: "In any such suit or trial for forfeited taxes, the fact that real estate or personal property is assessed to a person, firm or corporation, shall be *prima facie* evidence that such person, firm or corporation was the owner thereof, and liable for the taxes for the year or years for which the assessment was made, and such fact may be proved by the introduction in evidence of the proper assessment book or roll, or other competent proof." The foregoing proof, under the provisions of this section, constituted a *prima facie* case, and established to that extent the ownership of the property in question. The defendant, to defeat that *prima facie* case, then offered in evidence a deed purporting to be made by George F. Harding to the Chicago Real Estate, Loan and Trust Company, dated June 10, 1896, acknowledged July 1, and recorded July 2, 1896, for an expressed consideration of five dollars, conveying "all interest in the following described real estate, to-wit: Any and all lands, of every kind and description, claimed or owned by me in the State of Illinois,
158 and all lots and lands, of every description, in the city of Chicago in which I have any right, title or interest whatsoever, situated in the State of Illinois," etc. Objection was made to this deed upon the ground that it was too general in its terms, did not apply to any specific property, and therefore was not sufficient notice to the assessor, collector and the general taxing officers of Cook county that the ownership of the land had changed. Subject to this objection the deed was admitted in evidence.

Conceding that the deed, if it stood alone, would overcome the *prima facie* case made by the plaintiff, the tax records of Cook county for the year 1898 offered in evidence by the People tended to prove ownership in the defendant. The items in the tax warrant for the year 1897 on this property were charged to him and merged into a judgment. He appeared in the county court and objected to the validity of the tax, but judgment was rendered against him as owner. This was subsequent to the date of the deed. His remedy as to that tax, if levied unjustly against him, was by appeal. (Biggins *v.* People, 106 Ill. 270.) As to that tax he clearly could not, in this proceeding, attack the validity of the former judgment.

Moreover, after the date of the deed he received the rents accruing from the property and deposited the money so received to his personal account. Notwithstanding the attempted explanation of that transaction, we think the clear weight of the evidence is that he continued, after the pretended conveyance, to deal with the premises as his own.

In the light of all the evidence in the case it is very clear that the conveyance of June 10, 1896, was merely colorable, and not executed with the honest purpose of conveying the absolute ownership of the property to the grantee.

There is no merit in the contention that the People failed to prove all the material allegations of the declaration, nor is that question properly preserved by the assignment of errors.

It is also said that the foregoing section of the statute, under which the action is brought, is unconstitutional, but no authorities are cited or argument advanced in support of that assertion. The point, if it can be so considered, has therefore been waived.

The judgment of the circuit court will be affirmed.

Judgment affirmed.

159 STATE OF ILLINOIS, } ss:
Supreme Court, }

I, Christopher Mamer, clerk of the supreme court, of the State of Illinois, and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof, I have set my hand and affixed the seal of the said supreme court of Springfield, this 6th day of May A. D. 1903.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

C. MAMER,
Clerk of the Supreme Court.

160 At a supreme court, begun and held at Springfield on Tuesday, the seventh day of April, in the year of our Lord one thousand nine hundred and three, within and for the State of Illinois.

Present: Benjamin D. Magruder, chief justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; James H. Cartwright, justice; Carroll C. Boggs, justice; John P. Hand, justice; James B. Ricks, justice; Howland J. Hamlin, attorney general; Benjamin H. Brainerd, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, that afterwards, to-wit: on the twenty-fourth day of April A. D. 1903, certain proceedings were had in said court, and orders made and entered of record, among which is the following, viz:

GEORGE F. HARDING
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } 2797. Appeal from Cook.

And now on this day the court having duly considered the petition of appellant for a rehearing herein and being fully advised in the premises overrules and denies said petition.

161 And afterwards, to-wit on the second day of June A. D. 1903, there was filed in the office of the clerk of said court a certain petition for writ of error, order granting the same, bond for costs and damages, and assignment of errors, which said petition for writ of error, order granting the same, bond for costs and damages, and assignment of errors, are in the words and figures following, viz:

162 In the Supreme Court of the United States, October Term, A. D. 1902.

GEORGE F. HARDING
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. }

Petition for Writ of Error to the Supreme Court of Illinois.

163 In the Supreme Court of the United States, October Term, A. D. 1902.

GEORGE F. HARDING
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. }

To the honorable the chief justice of the supreme court of the State of Illinois:

Your petitioner, George F. Harding, respectfully represents and shows that he is a citizen of the United States, and was personally served with process of summons in the county of Cook, in the State of Illinois on the 28th day of September, 1901, in a certain action in debt brought and then pending in the circuit court of the said county of Cook by the said The People of the State of Illinois, as plaintiff, against your petitioner, as defendant, further particulars of which suit will be hereinafter shown. On July 7th, 1902, a judgment was rendered by the said circuit court in the said suit in favor

of the plaintiff therein and against your petitioner as defendant for the sum of $2123.05, as shown by the transcript of record duly certified by the clerk of the supreme court of Illinois and now presented with this petition, to which record reference is made, as well as to the printed abstract of said record also duly certified and presented with this petition, and the same are hereby made a part of this petition.

2. From the said judgment of the said circuit court your petitioner duly prosecuted his appeal to the supreme court of
164 Illinois, and the said judgment was affirmed by the said supreme court on February 18th, 1903, as appears from page 155 of the said record; and on the same day the said supreme court filed its opinion in said cause, which opinion is shown in full on pages 156 to 158, inclusive, of said record; that afterwards, to wit, on the 14th of March, 1903, being within the time allowed by the rules of the said supreme court of Illinois for the filing therein of a petition for rehearing in said cause, your petitioner filed therein his petition for rehearing in said cause, a copy of which petition duly certified is presented with this petition and the same is hereby referred to as a part of this petition.

3. The declaration filed in said cause on March 11th, 1901, is fully shown in the said record and on pages 2 to 4, inclusive, of said abstract, and, as appears from said declaration, the said action was brought under and by virtue of section 230 of the act of the legislature of Illinois entitled "An act for the assessment of property and for the levy and collection of taxes," approved March 30th, 1872, in force July 1st, 1872. (3 Starr & Curtis Stat. page 3501, paragraph 232.) Section 59 of the same revenue act (3 Starr & Curtis Stat. page 3426) provides that "the owner of property on the first day of May in any year, shall be liable for the taxes of that year;" and section 8 of the act of said legislature entitled "An act for the assessment of property and providing the means therefor, and to repeal a certain act therein named," approved February 25th, 1898, and in force July 1st, 1898, (4 Starr & Curtis Stat. page 1110), provides that "the owner of property on the first day of April in any year shall be liable for the taxes of that year;" and section 55 of the said last named act (4 Starr & Curtis Stat. page 1124) provides that
165 "all the provisions of the general revenue law in force prior to the taking effect of this act shall remain in force and be applicable to the assessment of property and collection of taxes except in so far as by this act is otherwise expressly provided."

4. As appears from the said record, and as shown on page 5 of said abstract, among the defences set up by your petitioner, in his pleadings, against the said suit, were the point that the said statute on which the said suit is brought is contrary to the Constitution of the United States, and is a taking of property without due process of law, and the further point that your petitioner, the defendant in said suit, did not own the real estate described in the said declaration as alleged therein, namely, in the year 1897, or the year 1898, or the year 1899, or the year 1900; and, as shown in said record,

and as appears from pages 58 to 61 inclusive of the said abstract, the said circuit court held on the trial of said cause in its several propositions of law marked "held" in said cause that the deed in evidence (abstract 57) of George F. Harding (your petitioner) as grantor, to the Chicago Real Estate Loan & Trust Company, as grantee, dated June 10th, 1896, and recorded July 2d, 1896, was a valid and sufficient conveyance of all interest of the grantor (your petitioner) at the time of the making of the said deed by your petitioner in or to the real estate described in the said declaration, and that the burden was on the said plaintiff in said suit to show a re-vesting of title or interest in or to the said real estate, in said George F. Harding (your petitioner) subsequent to the making of the said deed; and as further appears from the said record, and as shown on pages 62 to 66, inclusive, of the said abstract, among the points urged by your petitioner in support of his motion to set aside
166 the finding of the court and grant a new trial in said cause, were those numbered 26 and 27 therein, insisting that the said statute above referred to is contrary to the Constitution of the United States, and that the said suit brought under the said statute is a taking of property without due process of law and otherwise unconstitutional; and as appears from the said record, and as is shown on page 68 of said abstract, among the assignments of error in said cause by your petitioner in the said supreme court of Illinois, was the assignment that the finding and judgment of the court were erroneous for the several reasons stated in the said points filed in support of the said motion to set aside the said finding and grant a new trial in said cause and that said circuit court erred in not granting said motion; and in the first brief and argument filed for appellant in the State supreme court (a duly certified copy of which is presented with this petition, and the same is hereby referred to and made a part thereof) on page 8, among the points stated as those relied on for a reversal of said judgment was the point that the said statute on which the said suit was based was contrary to the Constitution of the United States for the reason that the legislature has no authority to make a tax on real estate a personal liability to be collected by an action of debt, and that the remedy of the State must be limited to the taking of the property on which the tax is assessed; and on page 12 of the same brief and argument the same point is again raised and again on page 26 thereof; and in the reply brief and argument filed for appellant in the said supreme court (a duly certified copy of which is presented with this petition and the same is hereby referred to and made a part of this petition) on page 34 the same point is again referred to, as was also done
167 on pages 27 and 28 of the said petition of appellant for a rehearing in the said supreme court.

5. As appears from the said record, and as shown on pages 12 to 14, inclusive, of said abstract, your petitioner on the trial of the said action in the said circuit court offered in evidence a duly certified copy of the said deed made by him to the Chicago Real

Estate Loan & Trust Company dated June 10th 1896 and recorded July 2d, 1896, purporting to convey all interest of the grantor in lots and lands of every description in the city of Chicago (or elsewhere in the State of Illinois) to the said grantee, and no objection to the said deed in evidence was made upon the ground that the same was colorable or fraudulent; and as appears later in said record and as shown on page 21 of said abstract, said deed later in said trial was admitted in evidence without any objection or exception on the part of the plaintiff in the said suit, and, as further appears from the said record and as shown on pages 16 and 17 of said abstract, the said trial court and the counsel for said plaintiff in the trial of said cause conceded that the said deed was a valid conveyance, and, as further appears from the said record and as shown on pages 58 to 61, inclusive, of the said record, the trial court in its several propositions of law in said cause held that the said deed was a valid and sufficient conveyance, and none of such holdings were objected to or excepted to by the counsel for plaintiff in said suit and as then shown, the said trial court held in said propositions of law that the burden was on the plaintiff in said cause to show a revesting of title or interest in or to the said lot in your petitioner subsequent to the making of said conveyance, and none of such holdings were objected to or excepted to by the counsel for plaintiff in said suit.

168 6. There was no proof upon the trial of said cause in any way tending to prove a re-vesting of any title or interest in or to said lot in your petitioner subsequent to the making of the said deed above referred to, and upon the trial of said cause your petitioner repeatedly offered to prove affirmatively that there had been no such revesting of any title or interest in or to the said lot in him, but said proof was rejected by the said trial court at the instance of the counsel for said plaintiff in said cause upon the ground that such proof was not needed; the said conveyance having been held as valid, as above shown, and being conceded to be valid by counsel for plaintiff in said trial, as above shown, and to such rejection of proof your petitioner duly preserved his exceptions, and assigned the same as grounds for a new trial, and assigned the same as error in said supreme court and insisted upon the same as error in his said arguments and briefs in the said supreme court, and in his said petition for rehearing, as will more fully appear from the said record, and as shown on pages 14, 15, 16, 17, 18, 19, 29, 58, 68, of the said abstract and on pages 3, 4, 9, 17, 19 and 28 of said first above named brief and argument and on pages 3, 14, 20, 22, 23, 25, 26 and 35–37 of said reply brief and argument, and on pages 22–25 of said petition for rehearing.

7. The said supreme court of Illinois in its said opinion in this cause erroneously held that "the tax records of Cook county for the year 1898 offered by the People tended to prove ownership in the defendant. The items in the tax warrant for the year 1897 on this property were charged to him and merged into a judgment. He

appeared in the county court and objected to the validity of the tax but judgment was rendered against him as owner. This was subsequent to the date of the deed. His remedy as to that tax, if
169 levied unjustly against him, was by appeal. (Biggins vs. People, 106 Ill. 270.) As to that tax he clearly could not in this proceeding attack the validity of the former judgment." The errors in this holding by the supreme court are (first) that the said tax record for the year 1898, being the tax warrant of that year issued for collection of taxes of 1897 and being shown on pages 70 and 71 of the said record presented with this petition, *in no way refers to any judgment in the county court or to any proceeding in the county court whatsoever, and no judgment of the said county court in or for the year* 1898, *or in or for the year* 1897, *was received in evidence or offered in evidence, and there is no evidence anywhere in the record that the taxes of* 1897 *were charged against your petitioner as owner or otherwise and merged in a judgment.* Second. Your petitioner did not appear in the said county court *as owner* in the year 1898, but, as appears from the said record and as shown on page 56 of the abstract, his attorney, joining his (your petitioner's) name with the Chicago Real Estate Loan & Trust Company, the grantee in the general deed, and joining also another party as one of the objectors, filed objections to judgment in the county court reciting that the said objectors were jointly and severally the owners of or interested in the lots and lands described in the objections, being a long list embracing this lot in question, and it nowhere appears in this record what became of such objections made in said county court, by both the grantor and grantee in the said deed and another. So far as this record shows, the said objections may have been withdrawn, or they may have been sustained by the county court, there being no proof whatever as to what action was had in the county court, and much less any proof of any judgment being rendered against any one
170 as owner or otherwise or even against the property. Besides such judgment of the county court, if any were rendered, would only relate to the taxes of 1897, being a very small part of the present judgment against your petitioner. It will be seen that all these points were insisted on in the said petition for rehearing.

8. The said opinion of the supreme court in this cause further states that after the date of the said general deed the grantor therein received the rents from the said property and deposited the money in bank and thus continued after the "*pretended*" conveyance to deal with the premises as his own, and that "in the light of all the evidence in the case it is very clear that the conveyance of June 10th, 1896, was merely colorable, and not executed with the honest purpose of conveying the ownership of the property to the grantee," thus wholly ignoring the fact that the conveyance was admitted to be valid and effectual by the plaintiff's counsel on the said trial and held valid and effectual by the said trial court as above shown without objection or exception on the part of counsel for said plaintiff and further ignoring the fact that there was no basis in the

pleadings for the trial of any issue as to the said conveyance being fraudulent, or colorable, or dishonest, or inoperative, or ineffectual, or as to its not being executed with an honest purpose, the authorities being universal that such a conveyance is valid and carries the title unless attacked in a proper proceeding by proper pleadings by a party having the right to question its validity or its character.

9. It thus appears that the supreme court of Illinois in and by its said opinion and judgment in this cause without the slightest proof even tending to show a re-vesting of any title or interest in or to said lot in the said grantor (your petitioner) subsequent

171 to the making of the said general deed conceded to be valid and held valid as above shown, and in spite of the repeated offers of your petitioner, as above shown, to affirmatively prove that no interest in or to said lot was ever acquired or received by him subsequent to the making of said deed, and in spite of the fact that such deed was not attacked either by pleadings or proof in said cause and no issue was presented under which it could be attacked,—yet said supreme court erroneously held and declared and adjudged that the said deed was colorable and did not pass title, and that therefore your petitioner remained the real owner of said lot and was hence liable in the said action for the amount of said judgment, and further erroneously held and declared in its said opinion that your petitioner had waived his right to call in question the constitutionality of said act or of said proceedings thereunder.

172 For the purpose of a more detailed and more perfect showing of the questions involved and raised and decided, and of the entire situation in this cause, your petitioner asks that the said transcript of record showing, among other things, the denial of your petitioner's petition for rehearing on the 24th day of April, 1903, and the said opinion of said supreme court and its said judgment of affirmance, and the said abstract of record and the said two printed briefs and arguments and the said petition for rehearing be deemed and treated as a part of this petition for writ of error.

And so it is that your petitioner claims and shows that in and by the said action and judgment of the said circuit court of Cook county and in and by the said action and opinion and judgment of the said supreme court of Illinois your petitioner's rights under the Constitution of the United States and its amendments have been invaded and disregarded and denied in that he has thus been and is deprived of the rights privileges and immunities secured to him by said Constitution and its amendments and deprived of property without due process of law and deprived of the equal protection of the laws guaranteed to him by the said Constitution and its amendments, particularly by the 14th amendment to the said Constitution, and his property taken without due process of law, and he deprived of equal protection of the laws contrary to section 1 of the 14th amendment to said Constitution, all of which rights and privileges and immunities were duly insisted upon in these proceedings

by your petitioner, as above shown, and as to all of which the decision and action and judgment of the said circuit court and the opinion and action and judgment of the said supreme court have been and are against your petitioner and against his petitions and contentions and in favor of the
173 validity of said statute and of said proceedings and against the said rights, privileges and immunities of your petitioner and to the damage and prejudice of your petitioner and contrary to and repugnant to the Constitution of the United States and its amendments; and your petitioner claims and insists that not only is said statute contrary to the Constitution of the United States and the said proceedings thereunder, but particularly the said action of the said supreme court of Illinois in basing its decision against your petitioner on an issue not raised or even hinted at in the pleadings in said cause, namely, as to the character and purpose and effect of the said general deed, and without an opportunity of your petitioner to be heard on such an issue either in pleadings or in brief or in argument, and while at the same time rejecting and ignoring the repeated offers of your petitioner to prove that he had not acquired or received any right, title or interest in or to the said lot in question since the making of the said deed, and the holding of your petitioner liable for the said taxes assessed against the said lot at a time when your petitioner had no interest therein, and liable for said forfeitures at the time your petitioner had no interest in said lot, as shown by the undisputed proof all this your petitioner respectfully claims and insists is in violation of the Constitution of the United States and its amendments in the particulars above named and otherwise.

Wherefore your petitioner prays that a writ of error be allowed in said cause to remove the same from the said supreme court of Illinois to the said Supreme Court of the United States, and that he be permitted to give a bond with such conditions and in such amount and with such surety as may be required, and that
174 upon the giving of such bond, it be ordered that the said writ of error operate as a supersedeas in said cause and that a citation issue according to law and for such other and further and different relief in the premises as may be proper under the law and under the rules of the said supreme courts.

And your petitioner will ever pray, etc.

Dated June 1 1903.

GEORGE F. HARDING, *Petitioner*,
By WILLIAM H. BARNUM,
His Counsel.

WM. J. AMMEN,
WILLIAM H. BARNUM,
Counsel for said Petitioner.

175 *Suggestions and Brief in Support of the Foregoing Petition for Writ of Error.*

1. The point that the statute on which this action is based is contrary to the Constitution of the United States was first raised in the statement or notice of defences under the general issue. It was also raised in the statement of points in support of the motion for a new trial. Also in the assignments of error in the supreme court and in the first brief and argument for appellant in that court and also in his reply brief and argument and in his petition for rehearing. It is therefore a Federal question which has been duly preserved, and is seems that the present petitioner has the right to have it reviewed by the Supreme Court of the United States, the constitutionality of the statute having been held by the supreme court against his contention.

2. This entire suit is based upon the claim that George F. Harding owned the lot in question at the time of the assessment against it, and the forfeitures thereof, in the years 1897, 1898, 1899 and 1900, as averred in the declaration. This was the theory of the plaintiff's pleadings and the theory of its proofs and contentions throughout the trial, it being conceded all along that the plaintiff must sustain these averments of ownership on 1897 and subsequent years. The trial court held in these propositions of law that the plaintiff must so prove ownership.

3. In the trial court and in the briefs and arguments in the supreme court numerous and uniform authorities were cited sustaining the validity of a general deed of this character, and the validity of this particular deed was conceded at the trial by plaintiff's counsel, and also conceded in the supreme court by such counsel, and the trial court in its propositions of law held that the deed was valid, and vested the title in the Chicago Real Estate Loan & Trust Company, as owner. No issue was raised either in the pleadings or in the proof or even in the arguments as to the deed being
176 colorable or dishonest or fraudulent and the trial court held and the plaintiff's counsel conceded that the burden devolved upon the plaintiff to prove a re-vesting of title or interest in Mr. Harding subsequent to the making of the general deed. This holding of the trial court in its propositions of law was not objected to or excepted to by the counsel for plaintiff, but was, on the contrary, conceded by such counsel to be correct and sound. The trial court even stated that its rejection of Mr. Harding's repeated offers to prove affirmatively that no title or interest had become vested in him subsequent to the making of that deed was because such proof was not needed, until the plaintiff proved that there had been such a re-vesting of title or interest in Mr. Harding, and all this was concurred in by the counsel for plaintiff.

4. There was no proof whatever tending to show a revesting of

title or interest in Mr. Harding subsequent to the taking of the general deed. If there had been any such proof, the trial court's rejection of Mr. Harding's repeated offers to prove the contrary must have been held by the supreme court as a fatal error, because it related to the very vital fact in controversy, and the proof offered was clear, decisive and conclusive on that question, and if that proof were needed at all its rejection was a denial to the defendant of the equal protection of the laws and a taking of his property without due process of law to which he is entitled under the Constitution of the United States, and if such proof was needed the failure of the supreme court to reverse the judgment on that ground and grant a new trial was for the same reason a denial to the defendant of such equal protection of the law, and a taking of his property without due process of law.

5. The supreme court of Illinois, however, did not pass upon these questions, and did not base its decision upon any
177 ground or theory upon which the case had been presented either in the pleadings or in the proof, or upon any contention or claim of either of the parties, but upon an issue and upon a point in no way raised or hinted at in the pleadings or in the proof or in the contentions of the parties, namely, upon the point that the general deed was colorable and dishonest, thus deciding the entire case upon an issue never raised and never heard, and in no way involved in the case, thus again depriving Mr. Harding of the equal protection of the laws and the right to be heard in pleadings and proof on an issue duly raised and involved, and thus taking his property without due process of law.

6. This last disregard of Mr. Harding's constitutional rights arose, first, in the opinion of the supreme court of Illinois, and his first opportunity to assert that he was thus deprived of constitutional rights was in his petition for rehearing in which the point was duly raised.

7. It is therefore respectfully submitted that two Federal questions are now involved in this case upon which the present petitioner ought to be permitted to have the case heard in the Supreme Court of the United States.

178 *Authorities.*

If the right asserted under the Constitution was set up, *or claimed*, by the defendant in the State court, the writ of error should issue, and will not be dismissed on motion for want of jurisdiction.

U. S. Compiled Statutes 1901 vol. 1, sec. 709.

C. B. & Q. R. R. Co. *vs.* Chicago 166 U. S. 226 p. 230.

It is sufficient if the record shows that the Federal question was raised and decided adversely to the plaintiff in error.

2 Foster's Federal Practice (3rd. edition) p. 1186, citing cases.

In raising the Federal question in the State court "it is not necessary to state specifically the particular provision of the Constitution of the United States upon which the party relies."

Id. p. 1186, foot note 41, ciring cases.

"Due process of law" includes the right of a party not only to be brought properly into court but also the right when thus brought into court;" to establish any fact, which according to the usages of the common law or the provisions of the Constitution would be a protection to himself or property."

Wright *vs.* Cradlebaugh 3 Nevada, 341, p. 349, citing Taylor *vs.* Porter & Ford, 4 Hill, 140.

By these words "due process of law" is necessarily implied and included the right to answer to and contest the charge, and the consequent right to be discharged from it *unless it is proved.*

Green *vs.* Briggs *et al.* (1 Curt. 311) 10 Fed. Cases 1135, p. 1140.

"Due process of law implies the right * * * of controverting by proof every material fact which bears on the question of right in the matter involved."

Ziegler *vs.* S. & N. A. R. R. Co. 58 Ala. 594, p. 599.

NOTE.—In the case at bar the fact that the deed in evidence
179 passed title was conceded in the trial court, and there was no issue or question raised to the contrary; but the supreme court held conclusively to the contrary without an opportunity to appellant to be heard on such issue, either in pleadings or proof or argument, and in a common law proceeding in which the validity of the deed could not be attacked.

Please see also,

Cooley Constitutional Limitations, 359.

Ex parte Ulrich 42 Fed. Rep. 587, p. 597.

When a Federal right is claimed the Federal court will inquire if the law was properly applied to the facts by the State court.

C. B. & Q. R. R. Co. *vs.* Chicago, *supra.*

This is a very valuable authority in the case at bar.

180 Copy.

In the Supreme Court of Illinois, April Term, A. D. 1903.

GEORGE F. HARDING, Appellant,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee. } Order of Issue of Writ of Error.

Now, on this first day of June, A. D. 1903, comes the above named George F. Harding and presents herein his petition for the removal

of said cause to the Supreme Court of the United States for review therein and for issue of a writ of error to that end, and it appearing from the said petition and the record and exhibits presented therewith that a Federal question arising under the Constitution of the United States and its amendments has been duly raised and preserved by the said petitioner in said cause and decided against him in and by the supreme court of Illinois as set forth in said petition and it thus appearing that one or more Federal questions are involved in this proceeding:

It is therefore ordered that a writ of error issue in due form for removal of the said cause and of the record and proceedings therein from the supreme court of Illinois to the Supreme Court of the United States, and it is further ordered that the said writ of error operate as a supersedeas in said cause upon the said petitioner filing herein his bond in the sum of three thousand dollars ($3,000.00) with Abner C. Harding and Gregory T. Van Meter as sureties, said bond to be conditioned for the prosecution of the said writ of error to effect by the said petitioner and for payment of all costs and damages if he, the said petitioner, shall fail to make good his plea.

BENJAMIN D. MAGRUDER,
Chief Justice of the Supreme Court of Illinois.

181 Copy.

In the Supreme Court of Illinois, April Term, A. D. 1903.

GEORGE F. HARDING, Appellant,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee. } Bond.

Know all men by these presents: That we, George F. Harding, as principal, and Abner C. Harding and Gregory T. Vanmeter as sureties are held and firmly bound unto the People of the State of Illinois, party above named, in the sum of three thousand dollars, to be paid to the said, The People of the State of Illinois, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated the first day of June A. D. 1903.

Whereas the above named George F. Harding has sued out a writ of error to remove the above entitled cause from the supreme court of Illinois to the Supreme Court of the United States to have reviewed in said last named court the judgment of the supreme court of Illinois in said cause:

Now, therefore, the condition of this obligation is such that if the above named George F. Harding shall prosecute said writ to effect and pay all costs and damages, if he shall fail to make good his

ples, then this obligation shall be void; otherwise to remain in full force and virtue.

GEORGE F. HARDING, [SEAL.]
By GEORGE F. HARDING, JR., [SEAL.]
His Attorney in Fact.
ABNER C. HARDING. [SEAL.]
GREGORY T. VANMETER. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, }

I, the undersigned, Albert B. Joyner, a notary public in and for the county of Cook and State of Illinois hereby certify that the above named George F. Harding, Jr., whose name is subscribed to the foregoing instrument personally appeared before me on this June 1st, 1903 and acknowledged that he signed, sealed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of the said George F. Harding and as the free and voluntary act of the said George F. Harding, Jr., as attorney in fact for the said George F. Harding for the uses and purposes therein set forth; and I further certify that on said date the above named Abner C. Harding and Gregory T. Van Meter, whose names are signed to the foregoing instrument, personally appeared before me and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and notarial seal on this 1st day of June A. D. 1903.

[SEAL.] ALBERT B. JOYNER,
Notary Public in and for Cook County, Illinois.

182 Copy.

Know all men by these presents, that I, the undersigned George F. Harding, have made, constituted and appointed, and do hereby make, constitute and appoint, my son, George F. Harding, Jr., of the city of Chicago, Cook county, Illinois, my true and lawful attorney, for me and in my name, place and stead, to make, sign, seal, acknowledge and deliver any and all appeal bonds and all other bonds and all other instruments of writing whatsoever that may be hereafter requisite or necessary or that may be by my said attorney deemed requisite or necessary for appeal or for supersedeas or for any other purpose whatsoever, in or about any suit or suits heretofore or now or hereafter pending in any court of Illinois or elsewhere and particularly any bond that may be needed or may be by my said attorney deemed necessary in the case of People of the State of Illinois, as plaintiff, against me, said George F. Harding, as defendant lately pending in the circuit court in and for the county of Cook

and State of Illinois, being general number 216038 in said circuit court in which suit judgment was heretofore rendered against me and which said judgment was lately affirmed by the supreme court of Illinois, for appeal, or writ of error, or supersedeas, or for any other purpose whatsoever connected with the said suit, and to do and perform any and all acts and things whatsoever necessary or that may be deemed by my said attorney necessary for obtaining a review of the said judgment of the said supreme court of Illinois in and by the Supreme Court of the United States, by appeal, or writ of error, or otherwise, all as fully and completely as I might myself do if personally present, hereby ratifying and confirming all that my said attorney may do in or about the premises.

In witness whereof, I have hereunto set my hand and seal this 4th day of May, A. D. 1903.

GEORGE F. HARDING. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, }

I, the undersigned, Albert B. Joyner, a notary public in and for the county of Cook in the State of Illinois, hereby certify that the above named George F. Harding whose name is signed to the foregoing instrument, personally appeared before me on this 4th day of May, A. D. 1903, and acknowledged that he signed, sealed and delivered the foregoing instrument for the uses and purposes therein set forth.

Witness my hand and notarial seal this 4th day of May, A. D. 1903.

[SEAL.]

ALBERT B. JOYNER,
Notary Public in and for Cook County,
in the State of Illinois.

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Copy.

In Supreme Court of Illinois, April Term, A. D. 1903.

GEORGE F. HARDING, Appellant,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellees.

Affidavit of Surety on Bond for Writ of Error.

Abner C. Harding, being first duly sworn states on his oath that he owns the property known as the east half of the west two thirds of lot 3, block 95 School Section addition to the city of Chicago, Cook county, Illinois, otherwise known as numbers 168 and 170 East Madison street, in said city, in fee simple subject only to a mortgage of seventy five thousand dollars, and said property is now worth in the market over two hundred thousand dollars, and affiant owns other real estate and personal property in said county, and is

worth over two hundred thousand dollars over and above all his liabilities & all exemptions allowed by law. Dated this June 1, 1903.

ABNER C. HARDING.

Subscribed and sworn to before me this June 1, 1903.

[SEAL.] GEORGE I. HAIGHT,
Notary Public in & for Cook County, Illinois.

184 Original.

In the Supreme Court of the United States, October Term, A. D. 1902.

GEORGE F. HARDING, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error.
} Error to the Supreme Court of Illinois.

Assignment of Errors.

Now comes George F. Harding, plaintiff in error in the above entitled cause, and says that by the foregoing record the said supreme court of Illinois is shown to have erred in said cause, as follows:

1. In affirming the said judgment of the said circuit court of Cook county, Illinois.

2. In not reversing the said judgment.

3. In not holding the said statute under which the said suit is brought invalid by reason of its being contrary to the Constitution of the United States.

4. In not holding that the said statute, namely, section 230 of the act of the legislature of Illinois entitled "An act for the assessment of property and for the levy and collection of taxes," approved March 30th, 1872, in force July 1st, 1872, was and is a provision for the taking of property without due process of law and for a deprivation of the rights, privileges and immunities secured to the citizens of the United States, including the plaintiff in error herein, by the said Constitution and its amendments, and a deprivation of the equal protection of the laws guaranteed to the said citizens, including the said plaintiff in error, by the said Constitution and its amendments, particularly by the 14th amendment to the said Constitution, and especially section 1 of the said 14th amendment, all of which rights, privileges and immunities were duly insisted upon in these proceedings by the said plaintiff in error and as to all
185 of which the decision and action and judgment of the said circuit court of Cook county in said cause and the opinion and action and judgment of the supreme court of Illinois were and are against the said plaintiff in error and against his contentions in

said cause and in favor of the validity of the said statute and said proceedings and against the said rights, privileges and immunities of the plaintiff in error and to his damage and prejudice and contrary to and repugnant to the said Constitution of the United States and its amendments, particularly those portions thereof above referred to.

5. The said supreme court of Illinois further erred in basing its decision and opinion in said cause, and its judgment therein, on an issue not raised or even hinted at in the pleadings in said cause, namely, as to the character and purpose and effect of the said general deed or conveyance in evidence in said cause made by the said plaintiff in error as grantor to the Chicago Real Estate Loan & Trust Company as grantee dated June 10th, 1896 and duly recorded on July 2d, 1896, without an opportunity to said plaintiff in error to be heard on such issue either in pleading or in proof or in argument, and while at the same time rejecting and ignoring the repeated offers of the plaintiff in error to prove upon the trial of said cause that he had not acquired or received any right, title or interest in or to the said lot in question since the making of the said deed, and holding the plaintiff in error liable for the taxes assessed against the said lot and forfeitures thereon at a time when he had no interest in the said lot as shown by the undisputed proof in said cause, all of which was and is in violation of the Constitution of the United States and its amendments in the particulars above named and otherwise.

186 6. The said supreme court further erred in said cause in basing its decision and opinion and judgment therein upon an issue and point in no way raised or hinted at in the pleadings or the proof or in the contentions of the parties to said suit, namely, upon the point that the said general deed was colorable or dishonest, thus deciding the entire case upon an issue never raised and never heard and never tried and in no way involved in the case, thus depriving the plaintiff in error of the equal protection of the laws and of the rights to be heard in pleadings and proof on such issue and thus taking his property without due process of law, all in violation of the said Constitution of the United States and its amendments.

7. The said supreme court of Illinois erred in holding and deciding in said cause that the tax records of Cook county, Illinois, offered by the defendant in error upon the trial of said cause tended to prove ownership of the said lot in question by the said plaintiff in error; and in holding and deciding that the items in the tax warrant for the year 1897 on the said property were charged to the plaintiff in error and merged into a judgment; and in holding and deciding that the plaintiff in error appeared in the county court of said county and objected to the validity of the tax and that judgment was rendered against him as owner—all of these several holdings and decisions being contrary to the undisputed proof in the said cause and therefore a taking of property without due process of law and a deprivation of the equal protection of the laws and a

violation of the said Constitution of the United States and its amendments in these particulars and in the other particulars above named, there being no proof whatever in said record of any judgment in the said county court in or for the said years 1897 or 1898
187 and no proof whatever that the said taxes *taxes* or any part thereof were ever merged in a judgment against the plaintiff in error as owner or otherwise or charged against him as owner or otherwise, and there being no proof that the plaintiff in error objected to the said tax in the said county court as owner of the said lot.

8. The said supreme court of Illinois further erred in said cause in holding and declaring and adjudging that the said conveyance was colorable and did not pass title to said lot and that therefore the plaintiff in error remained the real owner of the said lot and liable as such owner for the amount of the said judgment, such holding and decision and judgment being without the slightest proof in said record even tending to show a revesting of any title or interest in or to the said lot in the plaintiff in error subsequent to the making of the said conveyance, which conveyance was conceded upon the trial of said cause to be valid and held valid by the said trial court and was not attacked by either pleadings or proof on such trial, and no issue was presented under which it could be attacked, and on the said trial the plaintiff in error repeatedly offered to prove that no interest in or to said lot was ever acquired or received by him subsequent to the making of said conveyance, which offers of proof were rejected by the said trial court, and exceptions of the plaintiff in error were duly preserved to such rulings, and the same were duly assigned as error in the said supreme court of Illinois and insisted on there by the plaintiff in error as grounds for the reversal of the said judgment, from all of which it duly appears that the plaintiff in error has been thus deprived of property without due process of law and deprived of the equal protection of the laws and his rights, privileges and immunities secured to
188 him under the Constitution of the United States and its amendments, thus invaded, disregarded and denied.

9. Said supreme court of Illinois further erred in said cause upon the grounds and for the reasons stated and shown in and by the petition of the plaintiff in error under date of June 1st, 1903 addressed to the chief justice of the supreme court of Illinois and duly filed in this cause, and the suggestions and brief attached to and filed with the said petition, all of which are for greater certainty hereby referred to and made a part of this assignment of errors.

10. The said statute of Illinois under which this action is brought as construed by the supreme court of Illinois in its opinion and judgment in this present suit makes the plaintiff in error personally liable in this action for the taxes levied and assessed in the years 1879 to 1896, inclusive, against the said lot, without any proof showing or tending to show ownership of said lot by the plaintiff in error at any time prior to the making of said deed

dated June 10th, 1896, and the said statute as thus construed is therefore in violation of the said Constitution of the United States and of the several amendments thereto, above referred to, and is a taking of property without due process of law and a denial to the plaintiff in error of the equal protection of the laws and of his other rights, privileges and immunities secured to him by the provisions of the said Constitution and of said amendments thereto, and the supreme court of Illinois therefore erred in its said judgment and ought to have held the said statute invalid by reason of its being in violation of the said Constitution and the said amendments in the particulars above shown.

11. The said statute of Illinois as construed by the
189 opinion and judgment of the supreme court of Illinois in this present proceeding holds the plaintiff in error personally liable in this action for the taxes levied and assessed against the said lot in the years 1897 to 1900, inclusive, notwithstanding the affirmative and undisputed proof that the plaintiff in error had no interest in or to the said lot subsequent to the making of the said deed of June 10th, 1896; and the said statute as thus construed is in violation of the said Constitution of the United States and of the several amendments thereto, above referred to, and the said statute and said proceedings thereunder are a denial to the plaintiff in error of the equal protection of the laws and of his other rights, privileges and immunities secured to him by the provisions of the said Constitution and of said amendments thereto, and are a taking of property without due process of law, and the supreme court of Illinois therefore erred in its said judgment and ought to have held the said statute invalid by reason of its being in violation of the said Constitution and of the said amendments in the particulars above shown.

12. As clearly appears from the opinion of the supreme court of Illinois in this cause, that court based its said decission against the plaintiff in error in the said cause on the alleged ground that the said deed of June 10th, 1896 was merely colorable and not made for an honest purpose and did not carry to the grantee named therein all interest of the said grantor, the plaintiff in error, in and to the said lot at the time of the making of said deed, notwithstanding the fact that the making and delivery of said deed was duly proved and was undisputed, and its validity and effect as a conveyance was expressly conceded by the counsel for the defendants in error on the trial of said cause and its validity and effect as a conveyance was held by the trial court in its propositions of law without objec-
190 tion or exception by the counsel for defendants in error and no issue was presented either in the pleadings or proof attacking the *the* validity or effect of the said deed as a conveyance or relating in any way to the character or purpose or effect of the said deed and no pleadings were presented under which proof upon any of these questions would be admissible, and the said action of the said supreme court of Illinois in thus holding the said deed in-

valid and inoperative as a conveyance without any pleadings under which such issue or such questions could or did arise and without an opportunity to the plaintiff in error to be heard thereon either in pleadings or in proof or in argument, was and is a taking of property without due process of law and a denial to the plaintiff in error of the equal protection of the laws, and a denial to him of the rights, privileges and immunities secured to him by the said Constitution of the United States and its amendments, and was and is in these several particulars and otherwise in violation of the said Constitution and of the amendments thereto above referred to and was therefore error on the part of the said supreme court of Illinois.

13. As appears from the provisions of the said statute of Illinois and from the declaration in this suit, and from the plea interposed by the plaintiff in error, and the notice of his defences filed with said plea, and from the propositions of law held in said cause, and from the said opinion of the said supreme court of Illinois in said cause, and from other portions of the record in this cause, a vital and material issue in said cause was as to the ownership of the said lot in question by the plaintiff in error in the years 1897, 1898, 1899 and 1900, and the said deed of June 10th, 1896, having been admitted in evidence and its validity and effect as a conveyance having been expressly conceded by the counsel for the defendants in error

191 and its validity and effect as a conveyance having been held by the trial court, the plaintiff in error thereupon had the right under the Constitution of the United States and its amendments, to show affirmatively on the trial of said cause that he, the plaintiff in error, had never received or acquired any interest whatsoever in or to the said lot subsequent to the making of the said deed of June 10th, 1896; and the refusal of the trial court to receive such proof offered by the plaintiff in error was a violation of the said constitutional rights, of the plaintiff in error, and the plaintiff in error having duly made and preserved his exceptions to the said action of the said trial court, and having duly assigned the same in the supreme court of Illinois as error upon the part of the trial court, the failure of the supreme court of Illinois to hold the same as error and on that ground reverse the said judgment of the said trial court was a denial to the plaintiff in error of his said constitutional rights; and the said action of the said circuit court and of said supreme court of Illinois were each a taking of property without due process of law, and a denial to the plaintiff in error of the equal protection of the laws, and a denial to him of the rights, privileges and immunities secured to him by the said Constitution and its said amendments, and therefore contrary to the said Constitution of the United States and its amendments, in these particulars, and was therefore error upon the part of the said trial court and upon the part of the said supreme court of Illinois, respectively.

14. The holding and decision of the supreme court of Illinois in its said opinion and judgment in said cause, as appears from the said opinion and the said judgment, that the point in relation to the

said constitutionality of the said statute had been waived by
192 the plaintiff in error, was error upon the part of the said supreme court of Illinois, for it appears from pages 16 and 17 of the transcript of record herein, and from pages 5 and 6 of the printed abstract of said record filed in the supreme court of Illinois in said cause, and now duly certified by the clerk of that court as a part of the present record in this cause, that the plaintiff in error duly raised the said point as to the constitutionality of the said statute in his notice of defences filed with his plea in said cause; and it further appears from pages 142 to 146 inclusive of said transcript of record, and from pages 62 to 66, inclusive, of said printed abstract, that the points numbered 26 and 27 in support of the motion for new trial, made by plaintiff in error, expressly raised the question that the said statute is a taking of property without due process of law, and is otherwise in violation of the Constitution of the United States, while point number 25 in support of the said motion for new trial raised the question as to the constitutionality of said statute under the constitution of Illinois; and as appears from page 147 of the said transcript of record and page 67 of said printed abstract, the plaintiff in error duly excepted to the overruling of the said motion for new trial and to the finding and judgment of the trial court; and it further appears from pages 151 and 152 of the said transcript of record and from pages 67 and 68 of said printed abstract that the eleventh assignment of error in the supreme court was that the finding and judgment of the trial court "were erroneous for the several reasons stated in the points filed in support of the motion to set aside the finding and grant a new trial;" and it appears from the first brief and argument filed for plaintiff in error in the supreme court of Illinois in said cause that the said point
was duly raised and presented near the end of page 8 thereof
193 and again near the middle of page 12; and in the paragraph numbered 13 on page 10, the formal statement of points filed in support of motion for new trial and the formal assignment of errors are referred to "for further and more detailed statement of points relied on for reversal;" and on page 15, the said brief, in closing, refers to the argument commencing on the next page "for further statement of points;" and on page 26 near the end of that page, it is stated that the questions raised as to the constitutionality of the statute are submitted "without further argument." The said brief and argument filed in the supreme court has been duly certified by the clerk of that court as a part of the present record, and the same is hereby referred to for greater certainty as a part of these assignments of error. And below the middle of page 34 of the reply brief and argument for the plaintiff in error, which was filed in said supreme court of Illinois in said cause and which has been duly certified by the clerk of that court as a part of this present record and which is hereby referred to and made a part of these assignments of error, the statement is made by counsel for plaintiff in error that "as to our contentions as to the unconstitutionality of the statute,

these contentions, we think, are sufficiently stated in our former brief and argument." And, beginning near the end of page 27 and ending on page 28 of the petition for rehearing filed by the plaintiff in error in the said supreme court of Illinois in said cause, which petition for rehearing has been duly certified by the clerk of that court as a part of this present record, it was stated as follows, namely: "Appellant (now plaintiff in error) wishes to be understood as insi-ting on, not as waiving, his assignments of error grounded upon the refusal of the trial court to hold the statute on which this
194 action is based to be contrary to the constitution of Illinois and to the Constitution of the United States, respectively * * *. Insistence on these assignments appeared on page 8 of the first brief. The questions were raised and are preserved by the objections to jurisdiction, motion to dismiss this suit, by the pleadings, in the propositions of law, in the motion for new trial, and by the assignment of errors."

15. The said supreme court erred in denying the said petition of the plaintiff in error for a rehearing in said cause.

16. The said denial of the said petition for rehearing was in violation of the Constitution of the United States and its amendments in the particulars already referred to in these assignments of error.

17. The said finding and judgment of the said circuit court of Cook county, Illinois, and the affirmance of the said judgment by the supreme court of Illinois, were, respectively, contrary to the undisputed evidence in said cause, and contrary to the law, and the same were, and are, respectively, in violation of the Constitution of the United States and its said amendments in the particulars above referred to in these assignments of error.

Wherefore, the plaintiff in error, herein, prays that the said proceedings and final judgment of the supreme court of Illinois herein be reviewed by the Supreme Court of the United States; and that the final judgment of the said supreme court of Illinois, and its order denying the said petition for rehearing in said cause, and the said judgment of said circuit court of Cook county, Illinois, be respectively reversed and set aside; and that the Supreme Court
195 of the United States will grant and enter herein such further or other and different orders and directions herein as law and justice in the premises may require.

By WILLIAM H. BARNUM,
His Attorney.

WM. H. BARNUM,
Counsel for Plaintiff in Error.

Endorsed on cover: File No. 18,978. Illinois supreme court. Term No. 61. George F. Harding, plaintiff in error, *vs.* The People of the State of Illinois. Filed June 19, 1903. File No. 18,978.

said constitutionality of the said statute had been waived by
192 the plaintiff in error, was error upon the part of the said supreme court of Illinois, for it appears from pages 16 and 17 of the transcript of record herein, and from pages 5 and 6 of the printed abstract of said record filed in the supreme court of Illinois in said cause, and now duly certified by the clerk of that court as a part of the present record in this cause, that the plaintiff in error duly raised the said point as to the constitutionality of the said statute in his notice of defences filed with his plea in said cause; and it further appears from pages 142 to 146 inclusive of said transcript of record, and from pages 62 to 66, inclusive, of said printed abstract, that the points numbered 26 and 27 in support of the motion for new trial, made by plaintiff in error, expressly raised the question that the said statute is a taking of property without due process of law, and is otherwise in violation of the Constitution of the United States, while point number 25 in support of the said motion for new trial raised the question as to the constitutionality of said statute under the constitution of Illinois; and as appears from page 147 of the said transcript of record and page 67 of said printed abstract, the plaintiff in error duly excepted to the overruling of the said motion for new trial and to the finding and judgment of the trial court; and it further appears from pages 151 and 152 of the said transcript of record and from pages 67 and 68 of said printed abstract that the eleventh assignment of error in the supreme court was that the finding and judgment of the trial court "were erroneous for the several reasons stated in the points filed in support of the motion to set aside the finding and grant a new trial;" and it appears from the first brief and argument filed for plaintiff in error in the supreme court of Illinois in said cause that the said point
was duly raised and presented near the end of page 8 thereof
193 and again near the middle of page 12; and in the paragraph numbered 13 on page 10, the formal statement of points filed in support of motion for new trial and the formal assignment of errors are referred to "for further and more detailed statement of points relied on for reversal;" and on page 15, the said brief, in closing, refers to the argument commencing on the next page "for further statement of points;" and on page 26 near the end of that page, it is stated that the questions raised as to the constitutionality of the statute are submitted "without further argument." The said brief and argument filed in the supreme court has been duly certified by the clerk of that court as a part of the present record, and the same is hereby referred to for greater certainty as a part of these assignments of error. And below the middle of page 34 of the reply brief and argument for the plaintiff in error, which was filed in said supreme court of Illinois in said cause and which has been duly certified by the clerk of that court as a part of this present record and which is hereby referred to and made a part of these assignments of error, the statement is made by counsel for plaintiff in error that "as to our contentions as to the unconstitutionality of the statute,

these contentions, we think, are sufficiently stated in our former brief and argument." And, beginning near the end of page 27 and ending on page 28 of the petition for rehearing filed by the plaintiff in error in the said supreme court of Illinois in said cause, which petition for rehearing has been duly certified by the clerk of that court as a part of this present record, it was stated as follows, namely: "Appellant (now plaintiff in error) wishes to be understood as in-
si-ting on, not as waiving, his assignments of error grounded upon the refusal of the trial court to hold the statute on which this
194 action is based to be contrary to the constitution of Illinois and to the Constitution of the United States, respectively * * *. Insistence on these assignments appeared on page 8 of the first brief. The questions were raised and are preserved by the objections to jurisdiction, motion to dismiss this suit, by the pleadings, in the propositions of law, in the motion for new trial, and by the assignment of errors."

15. The said supreme court erred in denying the said petition of the plaintiff in error for a rehearing in said cause.

16. The said denial of the said petition for rehearing was in violation of the Constitution of the United States and its amendments in the particulars already referred to in these assignments of error.

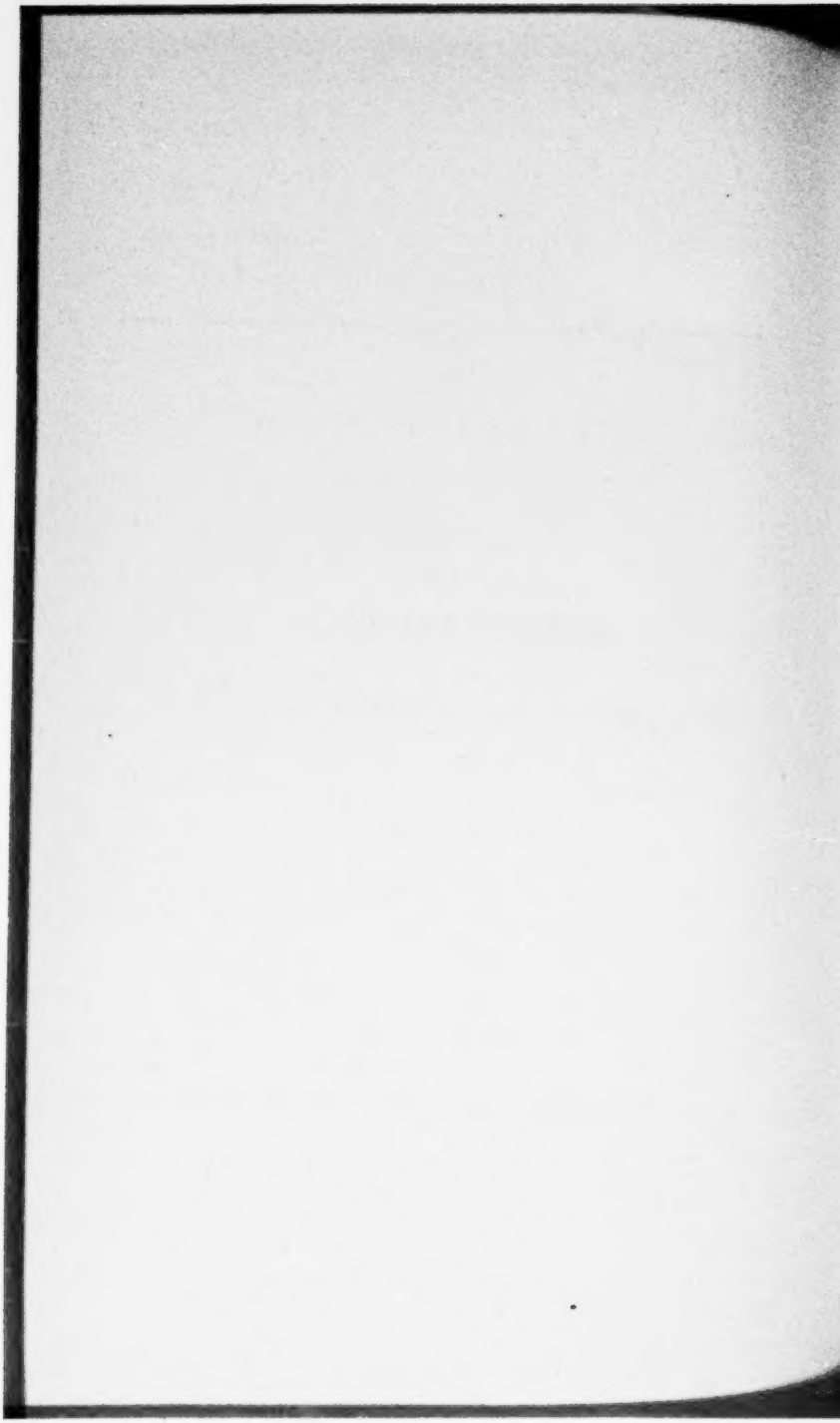
17. The said finding and judgment of the said circuit court of Cook county, Illinois, and the affirmance of the said judgment by the supreme court of Illinois, were, respectively, contrary to the undisputed evidence in said cause, and contrary to the law, and the same were, and are, respectively, in violation of the Constitution of the United States and its said amendments in the particulars above referred to in these assignments of error.

Wherefore, the plaintiff in error, herein, prays that the said proceedings and final judgment of the supreme court of Illinois herein be reviewed by the Supreme Court of the United States; and that the final judgment of the said supreme court of Illinois, and its order denying the said petition for rehearing in said cause, and the said judgment of said circuit court of Cook county, Illinois, be re-
spectively reversed and set aside; and that the Supreme Court
195 of the United States will grant and enter herein such further or other and different orders and directions herein as law and justice in the premises may require.

By WILLIAM H. BARNUM,
His Attorney.

WM. H. BARNUM,
Counsel for Plaintiff in Error.

Endorsed on cover: File No. 18,978. Illinois supreme court. Term No. 61. George F. Harding, plaintiff in error, *vs.* The People of the State of Illinois. Filed June 19, 1903. File No. 18,978.



IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1904.

No. 61.

GEORGE F. HARDING,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

Error to the Supreme Court of Illinois.

BRIEF and ARGUMENT for PLAINTIFF IN ERROR, both upon the merits and in opposition to Motion to dismiss the Writ of Error and to affirm the judgment of the Supreme Court of Illinois.

STATEMENT OF THE CASE.

I.

INTRODUCTORY STATEMENT.

The plan of this *statement* is to eliminate all local questions of mere state law and procedure which are solely for the state courts to decide, and to bring forward the facts proving that *federal* questions are involved, upon which plaintiff in error is entitled to the decision of this court as to whether or not he has been deprived by the state courts of rights secured to him by the Constitution of the United States.

It is apprehended that upon reading the bare statement of the facts this Honorable Court will not agree with opposing counsel's position, "that the writ of error

misleading if it merely set forth the language of Section 230, omitting the Supreme Court's reading of the same, no apology seems needful for quoting that reading and construction from *Biggins* v. *The People*, 96 Ill., 381, as follows:

> "1. The fifty-ninth section, by implication, excludes the idea of a personal action against any person other than such owner. The purchaser of property *does not become personally liable* by virtue of this section *for any taxes assessed* and which were due and unpaid *for years prior to that in which he became the owner*, but only for such as may be assessed for the year or years in which he was the owner on the first day of May (now April)."
>
> "2. Nor does Section 232 (now 230) of the act affect the question. * * * This *does not in any manner enlarge the provisions of Section* 59 as to the persons who shall be personally liable for the tax."
>
> "3. And though the property may become forfeited at a time when a particular person is the owner, *but for taxes assessed for the year or years prior to that in which his ownership accrued,* SUCH FORFEITURE WILL NOT OPERATE TO CREATE A PERSONAL LIABILITY IN HIM TO PAY THE TAXES."
>
> "4. The declaration should *state the year* for which the supposed tax was *levied*, and should also state that the defendant was the owner of the property on the 1st day of May (now April) of that year."

The foregoing has been the uniform reading and construction of the sections involved, as will appear from cases such as 95 Ill., 412, *The People* v. *Winkelman;* 137 Ill., 230, *Greenwood* v. *Town of LaSalle.*

In these cases declarations were held bad on demurrer for failure to aver that the defendants were the owners of the property on the first day of May of the

year or years for which the taxes were *assessed;* the court saying that "the rules of pleading require that it should be averred in the declaration and proved on the trial."

3.

THE PLEADINGS.

The declaration, filed March 11, 1901, is printed in full on pages 8 and 9 of the record.

While it alleges that the defendant owned the lot on the first day of May in 1897 and 1898, and on the first days of May and April in 1899 and 1900, and while it alleges that *in the said years taxes were assessed and levied* on said real estate *against the defendant, as owner thereof,* it does *not* allege that he was the *owner* of the lot in *any* year *prior* to 1897, nor that the taxes *were assessed and levied* on said lot *against the defendant, as the owner thereof,* in any year prior to 1897.

Consequently, reading Section 230 as our highest tribunal construes and reads it, all that could be recovered from the defendant, had he been proved to be the owner of the lot in 1897-'8-'9 and 1900, would be the amount *assessed* against him and the lot *in those four years.*

The amount claimed in the declaration is $2,698.38. The amount of the judgment recovered and affirmed was $2,123.05 and costs. (Rec., 13.)

It will be shown hereafter by the record that the said judgment of $2,123.05 is made up of "forfeitures for A. D. 1879 and subsequent years," amounting to $1,998.70, and $124.35 taxes of 1900 not even due, much less forfeited, when this suit was brought, March 11, 1901. (Rec., 4.)

Who owned the lot in 1879 or in any subsequent year down to 1896, and in whose name it was assessed during any of those seventeen years is neither averred nor proved.

After defendant's objections to jurisdiction and motion to dismiss and his general and special demurrer were overruled he pleaded the general issue with notice of special matters of defense, as shown in full on pages 11 and 12 of the record.

Among the defenses thereby specifically set up and relied on were the following:

> "I. That the statute of Illinois upon which this suit is brought is contrary to the Constitution of Illinois and contrary to the Constitution of the United States, and is a taking of property without due process of law."
>
> "II. That defendant did not own the real estate described in the declaration, as alleged therein."

Plaintiff in error insists that the record fails to show that he was the owner of the real estate in question at any time prior or subsequent to the year 1896; and also fails to show in whose name or for what amount it was assessed from 1879 to 1896, nor during what years of all that time the forfeitures occurred, nor what was their amount in each or any of said years.

He further insists that the judgment of $2,123.05 rendered against him and affirmed by the State Supreme Court is a taking of his property without due process of law, contrary to the Constitution of the United States, without pleadings, issues or proofs, under a novel and exceptional construction of said Section 230, applied to *this* case, but never before or since to any other,—a construction which brings the section into conflict with those provisions of the Constitution of the

United States (Amendments, Article XIV.) that forbid any state to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, or to deprive any person of his property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

Other infringements of said constitutional guarantees committed, as we claim, by the trial court and by the Supreme Court of Illinois, will be detailed in the order of their occurence, as this statement of the case proceeds.

Those infringements were one and all duly and severally excepted to, and each of them was assigned as error, as will fully appear by the Assignment of Errors in the Supreme Court of Illinois (Rec., 108) and by the Assignment of Errors in this court (Rec., 127), reprinted in the present brief.

4.

THE LEADING FACTS IN PROOF, RELATING TO FEDERAL QUESTIONS INVOLVED.

Jury being waived by agreement, the cause was tried before the court alone. (Rec., 14.) The plaintiff's attorney offered in evidence a certified copy of the collector's warrants for 1897, 1898, 1899 and 1900. (Rec., 44-60.)

Plaintiff next offered the tax judgment and sale record "in 1900 for the taxes of 1899." (Rec., 60-68.)

Plaintiff next read in evidence those portions of the assessor's rolls of 1897-1900, relating to the said property. (Rec., 18-19.)

Thereupon the plaintiff rested, and defendant's motion to exclude the evidence offered was overruled by the court, defendant excepting thereto. (Rec., 19.)

Defendant then offered in evidence a deed made and executed by him, dated June 10, 1896, acknowledged July 1, 1896, and recorded July 2, 1896, conveying all interest in any and all lands of every kind and description claimed or owned by him in the State of Illinois, or within the City of Chicago, to the grantee therein named—the Chicago Real Estate Loan & Trust Company. (Rec., 20-22.) The court was first inclined to sustain the objections to this deed as too general, and then took the question under advisement, and later admitted the deed in evidence (Rec., 26), and upheld it as a valid and sufficient conveyance in Propositions of Law numbers 3, 11 and 12. (Rec., 102-3.) It is printed in full as defendant's Exhibit 1 on page 75 of the record. Defendant also repeatedly offered to show that he had not acquired any right, title, interest, claim or demand whatsoever in or to the lot in question, or been in possession thereof since the date of the said general deed by him to the Chicago Real Estate Loan & Trust Company, either by conveyance or otherwise; these offers were all objected to by the attorney for the plaintiff, and the objections sustained, and the offered proof not admitted, to all of which rulings the defendant duly excepted. (Rec., 22-25.) This proof that the defendant had not re-acquired any interest in the property was offered in many forms and at different stages of the trial, and in every case the offer was refused and exception preserved. (Rec., 22, 25, 33.)

An offer to show that the defendant had not been in possession of the property since the date of the general

deed was also refused and exception preserved. (Rec., 25.)

Plaintiff in error insists, as he insisted upon his motion for new trial (Points 4, 5, 6, 26, 27 and other points) (Rec., 105-106), and as he insisted in his Assignment of Errors in the State Supreme Court (Points 2, 3, 4, 5, 6, 10, 11 and others), and again in his Assignment of Errors in this court (Points 13, 5, 8 and others) (Rec., 128-130) that the deed of June 10, 1896, from him to the Chicago Real Estate Loan & Trust Company, having been admitted in evidence, and its validity and effect as a conveyance having been conceded by both court and counsel (Rec., 102, 23), he, the plaintiff in error, had the right under the Constitution of the United States and its amendments, to show affirmatively on the trial that he had never received or acquired any interest whatsoever in or to the said lot subsequent to the making of said deed of June 10, 1896, and that the refusal of the trial court to receive such proof offered by him was a violation of his said constitutional rights, and that he having duly made and preserved his exceptions to the said action of the trial court, and having duly assigned the same in the Supreme Court of Illinois as error on the part of the trial court, the failure of the Supreme Court of Illinois to hold the same as error and on that ground to reverse the said judgment of the trial court was a denial to the plaintiff in error of his said constitutional rights; and the said action of the said Circuit Court and of said Supreme Court of Illinois were each a taking of property without due process of law, and a denial to him of the rights, privileges and immunities secured to him by said constitution and its said amendments, and there-

fore contrary to the Constitution of the United States and its amendments, in these particulars, and was therefore error upon the part of the said trial court and upon the part of the Supreme Court of Illinois, respectively.

The defendant also offered in evidence the private charter granted in 1857 to the Peoria Starch Manufacturing Company, and it was admitted as Defendant's Exhibit 8. (Rec., 101.) The portion of the charter material in the present case, namely, the grant of power to acquire and hold real estate, is shown on page 101 of the record.

It was agreed at the trial that the name, Peoria Starch Manufacturing Company, had been duly changed to Chicago Real Estate Loan & Trust Company before the making of the general deed. (Rec., 27.)

The plaintiff's rebutting evidence, omitting what was excluded by the court, was as follows:

Plaintiff offered in evidence a document referred to as Objections to judgment for delinquent taxes filed in the County Court in 1898, and it was admitted against the objections of the defendant and exception preserved to its admission. (Rec., 32, 73.) It contains the recital that the several objectors, "George F. Harding, the Chicago Real Estate Loan & Trust Company and Abner C. Harding, *jointly and severally* represent that they are *jointly and severally* the owners of OR interested in lots 4, 5, 6," etc.—Here follows a long list of lots and lands, including the lot in question in this case. The names of the objectors purport to be signed by their attorney, Wm. J. Ammen.

Defendant offered to prove as to this document by A. C. Harding, then present in court, ready to so testi-

fy that he, A. C. Harding, under the direction of the attorney, prepared and filed the instrument in the County Court, and was directed by the attorney that it was unnecessary to separately specify the separate ownership of the different pieces of property in the different owners, but was sufficient to refer to the parties named as owners of or interested in the property described, and that by reason of this direction of the attorney the instrument was so prepared and filed. This offered proof the court rejected, and exception was preserved. (Rec., 43.)

Plaintiff in error insists that the rejection of this offered evidence tended to and did deprive him of rights guaranteed to him by the 14th Amendment of the Constitution of the United States, namely, the right not to be deprived of his property without due process of law, not to be condemned with his evidence *unheard*. The Supreme Court of Illinois sanctioned said denial of due process of law, and said consequent wrongful deprivation of property, by affirming the judgment of the lower court and its refusal of the motion for a new trial wherein the point (No. 7, Rec., 105) was specially raised and by not reversing said judgment as requested to do by the eleventh and other assignments of error urged before it. (Rec., 106.)

The same point is fully covered by the seventh Assignment of Error in this court. (Rec., 128.)

There was some vague and indefinite proof of occupancy of the lot in question by the Union Wire Mattress Company as a tenant, but this proof was only in connection with the leases which were at that time admitted in evidence, but the leases were afterwards excluded without any further proof as to occupancy by said alleged tenant.

There were, however, three checks accompanied by three receipts offered in evidence by the plaintiffs and admitted against the objections of defendant. (Rec., 36.)

An employe of the First National Bank testified that the checks in question had been deposited to the credit of George F. Harding, such testimony being admitted against the objections of the defendant, as was also one deposit slip which was alleged to have embraced one of the checks. (Rec., 38.)

After the checks and receipts were admitted in evidence plaintiffs re-offered the excluded leases, but the court adhered to its ruling that they were inadmissible, though also denying the motion of the defendant to exclude the checks and receipts, to which ruling the defendant excepted. (Rec., 38.) Defendant offered further to show, in connection with the checks and receipts, by witnesses present in the court room, that a general real estate and renting agency was conducted in the name of George F. Harding; that his son, George F. Harding, Jr., assisted by Mr. Van Meter, has, and for several years past has had, the entire charge of that agency; that rents are collected for the different owners, and in whatever name the checks come in for the different owners they are deposited in a common account in bank in the name of George F. Harding, but that accounts are kept by the agency with the different owners showing the rents collected from each piece of property, and accounts rendered to the different owners, and the rents divided between them. To the refusal of the court to receive this proof the defendant excepted. (Rec., 39-40.)

Thereupon George F. Harding, Jr., testified that he

is the son of the defendant; that he handles his father's business entirely and completely; that his father conducts a real estate and renting business at 155 and 157 Washington street through him and those associated with him in the renting agency, which collects his father's rents, and also collects, among others, the rents of the Chicago Real Estate Loan & Trust Company. (Rec., 40-43.) He further testified that *the checks and receipts admitted in evidence represented collections made* by this renting agency *for the Chicago Real Estate Loan & Trust Company,* a real estate company and corporation.

He also testified that he settles with John Callow at Monmouth, Illinois, as the representative of the Chicago Real Estate, Loan & Trust Company for the rents collected; that he himself signs 99 per cent. of the checks drawn against the account in bank in the name of his father, George F. Harding; that the said account, though in the name of his father, is in fact the account of the firm, the principal owners of which are his brother and himself; that his father checks a little out of the account, but that whatever he draws out is charged against him.

5.

THE PROPOSITIONS OF LAW.

The plaintiff presented no propositions of law. The defendant presented twelve, with request that they be held by the court. All were held as the law except the seventh, eighth, ninth and tenth, which were refused and exception preserved. The twelve propositions, together with the rulings of the court thereon, are shown in full on pages 102-103 of the record.

6.

HOW THE ISSUES WERE DISPOSED OF.

The court found the issues for the plaintiff and assessed the amount due at the sum of $2,123.05. (Rec., 13.) The defendant filed a written motion to set aside the finding and grant a new trial, together with statement of points in support of such motion, the same being printed in full on pages 104-106 of the record. The court denied the motion and entered judgment on the finding. (Rec., 13.) To all of these several rulings, including the finding and the judgment of the court and the overruling of motion for new trial the defendants made and duly preserved his exceptions. (Rec., 106.)

The finding and judgment for $2,123.05 were in exact accordance with the claim of plaintiff's counsel, Mr. Martin, on page 17 of the record, where said $2,123.05 is explicitly stated by said counsel to consist of $1,998.25 of *forfeitures and penalties*, and the residue ($124.80) of current taxes for 1900. "We let it stand," counsel there says, "on the collector's warrant for the year 1900, as the amount we claim due to the People of the State of Illinois, $2,123.05."

Turning to the collector's warrant of 1900 thus referred to and set forth on page 57 of the record, while counsel's figures will there be found verified, it will also be found that the said $1,998 amount falls under the heading "Aggregate of Back Taxes and Forfeitures," and is a footing made up of the items to the left of it on the same line, which are denominated by words prefixed to them as "Forfeitures for A. D. 1879 and Subsequent

Years." The same words reappear in the collector's warrants for 1897-8 and '99 (Rec., 45, 49, 53), prefixed to the items carried along and footed up under like headings of "Aggregate of Back Taxes and Forfeitures."

It thus appears that the judgment affirmed by the Supreme Court in this case is made up of about $125 of taxes for 1900 *not due until April* 1, 1901, *after this suit* was brought, and $1,998.70 of "forfeitures for 1879 and subsequent years," while it nowhere in the record appears who owned the property, or in whose name it was *assessed* in any one of the seventeen years between 1879 and 1896, nor what years the *forfeitures* were in or for, nor what was the amount of the same in each or any year, nor whether plaintiff in error owned or claimed title in each or any of said years.

In other words, no liability of plaintiff in error is shown for any part of the $1,998.70 "forfeitures for 1879 and subsequent years," nor for the $125 taxes for 1900, not even due when the suit was brought.

Whoever did own the property at the time it was *assessed* in each of said seventeen years was the person, and, plaintiff in error claims, was *the only person*, personally liable for that year's taxes, and *the only person*, who, in case of forfeiture for want of bidders, could be *personally* sued under Section 230 for the taxes and forfeitures of that year.

Section 59 of Chapter 120 of the Revenue Act will be relied on, which provides that *"the owner* of the property on the first day of May (now April 1st) *in any year* shall be *liable* for the taxes of *that* year" (not for the taxes of *any* OTHER year). And the opinion of the Supreme Court of Illinois will be relied on, wherein the

learned author of the opinion in the present case says of the remedy now resorted to:

> "It is absolutely a personal remedy, enforcible against the person owning the property on the first day of May *of the year for which the tax was levied,* AND AGAINST NO ONE ELSE."

It is, therefore, insisted that by the affirmance of the judgment in this case the Supreme Court of Illinois has arbitrarily held plaintiff in error, George F. Harding, *personally* liable for the debts of other persons who were alone liable therefor, and has also arbitrarily held him responsible for the acts and neglects of other persons who were alone responsible therefor, and that he is thereby deprived of his property without due process of law, in violation of rights guaranteed to him by the fourteenth amendment of the Federal Constitution.

Bill of exceptions was duly filed in the Circuit Court within the time allowed by orders of court, and is fully set forth in the record herein (15 to 107). Appeal to the Supreme Court of Illinois was duly perfected (Rec., 107), and errors assigned upon the record filed therein. (Rec., 108-109.) The assignments designated as errors the foregoing several admissions and exclusions of evidence, the finding of the issues for the plaintiff, the overruling of the motion to set aside the finding and grant a new trial, the rendering and entering of said judgment, the several refusals of propositions of law offered by defendant, and further urged as error that the finding and judgment were severally contrary to the evidence and contrary to the law, and also that they were erroneous for the several reasons stated in the points filed in the motion to set aside the finding and grant a new trial (Assignment 11; Rec., 108-109), among which points,

thus incorporated as part of said assignment 11, were those numbered 26 and 27, urging, respectively, that the statute under which this action was prosecuted is contrary to the Constitution of the United States, and *that* THIS PROCEEDING *under said statute is a taking of property* WITHOUT DUE PROCESS OF LAW, and *otherwise* unconstitutional. (Rec., 106.)

Briefs and arguments having been submitted on both sides, judgment of the Circuit Court was affirmed on February 18th, 1903, by a judgment of the Supreme Court reciting, *inter alia* (Rec., 111), that the court after the cause had been argued by counsel, had *diligently examined and inspected* the record and proceedings and *the matters and things therein assigned for error,* and ordered that the judgment aforesaid be affirmed, *notwithstanding, the said matters and things therein assigned for error.*

It would seem that these findings and recitals of *a judgment* ought to outweigh the argumentative inference of the *opinion* that the assignments relating to and relying upon constitutional points raised by the pleadings and various other proceedings during the trial, were waived and denied consideration.

The opinion appears on pages 111 to 113 of the record. While it does *infer* that the assignment against the constitutionality of the statute was waived, it does not, by way of inference or otherwise, attempt to say that there was any waiver of the 11th assignment (Rec., 109), so far as it incorporated point 27 in support of the motion for new trial (Rec., 106) and thereby presented as a distinct error, distinctly and separately charged, that "this *proceeding * * * is a taking of property without due process of law.*"

"This proceeding," plaintiff in error claims, under said assignment of error—as he claimed throughout the trial, against adverse rulings of the court,—was not a due and regular proceeding, not "due process of law," inasmuch as, despite his objections and exceptions, the court admitted evidence of back taxes and forfeitures running back to 1879, seventeen years *before* any evidence as to his owning the property, and also admitted evidence of taxes and forfeitures during four years *after* his conveyance of it in 1896, at the same time refusing to receive rebutting evidence offered by him to prove that he had never after 1896, acquired or become reinvested with any title, interest or possession of said property.

It is claimed on behalf of plaintiff in error, that his 11th assignment of error including as it does his constitutional objections, 26 and 27 (Rec., 106), to the *statute* and to *proceedings* such as were had under it, is reinforced by all the rest of his 14 assignments (Rec., 109), except the last, as every one of them points unmistakably, as so many specifications, to action and rulings of the trial court, which were in themselves contrary to due process of law and culminated in depriving him of his property without due process of law.

The present statement of the case cannot probably be better completed than by reprinting here for the convenie nce of the court, the petition for writ of error (Rec., 114-122), upon which said writ was granted and made to operate as a *supersedeas,* by the order of the chief justice of the Supreme Court of Illinois, reciting (Rec., 124) that it appeared from the petition, record and exhibits, that a federal question arising under the Constitution of the United

States and its amendments has been duly raised and preserved by the petitioner in said cause and *decided* against him in and by the Supreme Court of Illinois, as set forth in said petition, and it thus appearing that *one or more federal questions were involved, etc.*

Said petition omitting the title and signatures, is as follows:

To the Honorable the Chief Justice of the Supreme Court of the State of Illinois:

Your petitioner, George F. Harding, respectfully represents and shows that he is a citizen of the United States, and was personally served with process of summons in the County of Cook, in the State of Illinois, on the 28th day of September, 1901, in a certain action in debt brought and then pending in the Circuit Court of the said County of Cook by the said The People of the State of Illinois, as plaintiff, against your petitioner, as defendant, further particulars of which suit will be hereinafter shown. On July 7th, 1902, a judgment was rendered by the said Circuit Court in the said suit in favor of the plaintiff therein and against your petitioner as defendant for the sum of $2,123.05, as shown by the transcript of record duly certified by the clerk of the Supreme Court of Illinois and now presented with this petition, to which record reference is made, as well as to the printed abstract of said record also duly certified and presented with this petition, and the same are hereby made a part of this petition.

2. From the said judgment of the said Circuit Court your petitioner duly prosecuted his appeal to the Supreme Court of Illinois, and the said judgment was affirmed by the said Supreme Court on February 18th, 1903, as appears from page 155 of the said record; and on the same day the said Supreme Court filed in its opinion in said

cause, which opinion is shown in full on pages 156 to 158, inclusive, of said record; that afterwards, to wit, on the 14th day of March, 1903, being within the time allowed by the rules of the said Supreme Court of Illinois for the filing therein of a petition for rehearing in said cause, your petitioner filed therein his petition for rehearing in said cause, a copy of which petition duly certified is presented with this petition and the same is hereby referred to as a part of this petition.

3. The declaration filed in said cause on March 11th, 1901, is fully shown in the said record and on pages 2 to 4, inclusive, of said abstract, and, as appears from said declaration, the said action was brought under and by virtue of section 230 of the act of the legislature of Illinois entitled "An act for the assessment of property and for the levy and collection of taxes," approved March 30th, 1872, in force July 1st, 1872. (3 Starr & Curtis Stat., page 3501, paragraph 232.) Section 59 of the same revenue act (3 Starr & Curtis Stat., page 3426) provides that "the owner of property on the first day of May in any year, shall be liable for the taxes of that year;" and section 8 of the act of said legislature entitled "An act for the assessment of property and providing the means therefor, and to repeal a certain act therein named," approved February 25th, 1898, and in force July 1st, 1898 (4 Starr & Curtis Stat., page 1110), provides that "the owner of property on the first day of April in any year, shall be liable for the taxes of that year;" and section 55 of the said last named act (4 Starr & Curtis Stat., page 1124), provides that "all the provisions of the general revenue law in force prior to the taking effect of this act shall remain in force and be applicable to the assessment of property and collection of

taxes except in so far as by this act is otherwise expressly provided."

4. As appears from the said record, and as shown on page 5 of said abstract, among the defences set up by your petitioner, in his pleadings, against the said suit, were the point that the said statute on which the said suit is brought is contrary to the Constitution of the United States, and is a taking of property without due process of law, and the further point that your petitioner the defendant in said suit, did not own the real estate described in the said declaration as alleged therein, namely, in the year 1897, or the year 1898, or the year 1899, or the year 1900; and as shown in said record, and as appears from pages 58 to 61, inclusive, of the said abstract, the said Circuit Court held on the trial of said cause in its several propositions of law marked "held" in said cause that the deed in evidence (Abst., 57) of George F. Harding (your petitioner) as grantor, to the Chicago Real Estate Loan & Trust Company, as grantee, dated June 10th, 1896, and recorded July 2nd, 1896, was a valid and sufficient conveyance of all interest of the grantor (your petitioner) at the time of the making of the said deed by your petitioner in or to the real estate described in the said declaration, and that the burden was on the said plaintiff in said suit to show a re-vesting of title or interest in or to the said real estate, in said George F. Harding (your petitioner) subsequent to the making of the said deed; and as further appears from the said record, and as shown on pages 62 to 66, inclusive, of the said abstract, among the points urged by your petitioner in support of his motion to set aside the finding of the court and grant a new trial in said cause, were those numbered 26 and 27

therein, insisting that the said statute above referred to is contrary to the Constitution of the United States, and that the said suit brought under the said statute is a taking of property without due process of law and otherwise unconstitutional; and as appears from the said record, and as is shown on page 68 of said abstract, among the assignments of error in said cause by your petitioner in the said Supreme Court of Illinois, was the assignment that the finding and judgment of the court were erroneous for the several reasons stated in the said points filed in support of the said motion to set aside the said finding and grant a new trial in said cause and that said Circuit Court erred in not granting said motion; and in the first brief and argument filed for appellant in the State Supreme Court (a duly certified copy of which is presented with this petition, and the same is hereby referred to and made a part thereof) on page 8, among the points stated as those relied on for a reversal of said judgment was the point that the said statute on which the said suit was based was contrary to the Constitution of the United States for the reason that the legislature has no authority to make a tax on real estate a personal liability to be collected by an action of debt, and that remedy of the state must be limited to the taking of the property on which the tax is assessed; and on page 12 of the same brief and argument the same point is again raised and again on page 26 thereof; and in the reply brief and argument filed for appellant in the said Supreme Court (a duly certified copy of which is presented with this petition and the same is hereby referred to and made a part of this petition), on page 34 the same point is again referred to, as was also done on pages 27 and 28 of the said petition of appellant for a rehearing in the said Supreme Court.

5. As appears from the said record, and as shown on pages 12 to 14, inclusive, of said abstract, your petitioner on the trial of the said action in the said Circuit Court offered in evidence a duly certified copy of the said deed made by him to the Chicago Real Estate Loan & Trust Company dated June 10th, 1896, and recorded July 2nd, 1896, purporting to convey all interest of the grantor in lots and lands of every description in the City of Chicago (or elsewhere in the State of Illinois) to the said grantee, and no objection to the said deed in evidence was made upon the ground that the same was colorable or fraudulent and as appears later in said record and as shown on page 21 of said abstract, said deed later in said trial was admitted in evidence without any objection or exception on the part of the plaintiff in the said suit, and, as further appears from the said record and as shown on pages 16 and 17 of said abstract, the said trial court and the counsel for said plaintiff in the trial of said cause conceded that the said deed was a valid conveyance, and, as further appears from the said record and as shown on pages 58 to 61, inclusive, of the said record, the trial court in its several propositions of law in said cause held that the said deed was a valid and sufficient conveyance, and none of such holdings were objected to or excepted to by the counsel for plaintiff in said suit and as then shown, the said trial court held in said propositions of law that the burden was on the plaintiff in said cause to show a re-vesting of title or interest in or to the said lot in your petitioner subsequent to the making of said conveyance, and none of such holdings were objected to or excepted to by the counsel for plaintiff in said suit.

6. There was no proof upon the trial of said cause in

any way tending to prove a re-vesting of any title or interest in or to said lot in your petitioner subsequent to the making of the said deed above referred to, and upon the trial of said cause your petitioner repeatedly offered to prove affirmatively that there had been no such re-vesting of any title or interest in or to said lot in him, but said proof was rejected by the said trial court at the instance of the counsel for said plaintiff in said cause upon the ground that such proof was not needed; the said conveyance having been held as valid, as above shown, and being conceded to be valid by counsel for plaintiff in said trial, as above shown, and to such rejection of proof your petitioner duly preserved his exceptions, and assigned the same as grounds for a new trial, and assigned the same as error in said Supreme Court and insisted upon the same as error in his said arguments and briefs in the said Supreme Court, and in his said petition for rehearing, as will more fully appear from the said record, and as shown on pages 14, 15, 16, 17, 18, 19, 29, 58, 68, of the said abstract and on pages 3, 4, 9, 17, 19 and 28 of said first above named brief and argument and on pages 3, 14, 20, 22, 23, 25, 26 and 35-37 of said reply brief and argument, and on pages 22-25 of said petition for rehearing.

7. The said Supreme Court of Illinois in its said opinion in this cause erroneously held that "the tax records of Cook County for the year 1898, offered by the People, tended to prove ownership in the defendant. The items in the tax warrant for the year 1897 on this property were charged to him and merged into a judgment. He appeared in the County Court and objected to the validity of the tax, but judgment was rendered against him as owner. This was subsequent to the date of the deed.

His remedy as to that tax, if levied unjustly against him, was by appeal. (*Biggins* v. *People,* 106 Ill., 270.) As to that tax he clearly could not in this proceeding attack the validity of the former judgment." The errors in this holding by the Supreme Court are (first) that the said tax record for the year 1898, being the tax warrant of that year issued for collection of taxes of 1897 and being shown on pages 70 and 71 of the said record presented with this petition, *in no way refers to any judgment in the County Court or to any proceeding in the County Court whatsoever, and no judgment of the said County Court in or for the year* 1898, *or in or for the year* 1897, *was received in evidence or offered in evidence, and there is no evidence anywhere in the record that the taxes of* 1897 *were charged against your petitioner as owner or otherwise and merged in a judgment.* Second. Your petitioner did not appear in the said County Court *as owner* in the year 1898, but, as appears from the said record, and as shown on page 56 of the abstract, his attorney, joining his (your petitioner's) name with the Chicago Real Estate Loan & Trust Company, the grantee in the general deed, and joining also another party as one of the objectors, filed objections to judgment in the County Court reciting that the said objectors were jointly and severally the owners of or interested in the lots and lands described in the objections, being a long list embracing this lot in question, and it nowhere appears in this record what became of such objections made in said County Court, by both the grantor and grantee in the said deed and another. So far as this record shows, the said objections may have been withdrawn, or they may have been sustained by the County Court, there being no proof whatever as to what action was had in the County

Court, and much less any proof of any judgment being rendered against any one as owner or otherwise or even against the property. Besides such judgment of the County Court, if any were rendered, would only relate to the taxes of 1897, being a very small part of the present judgment against your petitioner. It will be seen that all these points were insisted on in the said petition for rehearing.

8. The said opinion of the Supreme Court in this cause further states that after the date of the said general deed the grantor therein received the rents from the said property and deposited the money in bank and thus continued after the *"pretended"* conveyance to deal with the premises as his own, and that "in the light of all the evidence in the case it is very clear that the conveyance of June 10th, 1896, was merely colorable, and not executed with the honest purpose of conveying the ownership in the property to the grantee," thus wholly ignoring the fact that the conveyance was admitted to be valid and effectual by the plaintiff's counsel on the said trial and held valid and effectual by the said trial court as above shown without objection or exception on the part of counsel for plaintiff and further ignoring the fact that there was no basis in the pleadings for the trial of any issue as to the said conveyance being fraudulent, or colorable, or dishonest, or inoperative, or ineffectual, or as to its not being executed with an honest purpose, the authorities being universal that such conveyance is valid and carries the title unless attacked in a proper proceeding by proper pleadings by a party having the right to question its validity or its character.

9. It thus appears that the Supreme Court of Illinois in and by its said opinion and judgment in this cause,

without the slightest proof even tending to show a revesting of any title or interest in or to said lot in the said grantor (your petitioner) subsequent to the making of the said general deed conceded to be valid and held valid as above shown, and in spite of the repeated offers of your petitioner, as above shown, to affirmatively prove that no interest in or to said lot was ever acquired or received by him subsequent to the making of said deed, and in spite of the fact that such deed was not attacked either by pleadings or proof in said cause and no issue was presented under which it could be attacked,—yet said Supreme Court erroneously held and declared and adjudged that the said deed was colorable and did not pass title, and that therefore your petitioner remained the real owner of said lot and was hence liable in the said action for the amount of said judgment, and further erroneously held and declared in its said opinion that your petitioner had waived his right to call in question the constitutionality of said act or of said proceedings thereunder.

For the purpose of a more detailed and perfect showing of the questions involved and raised and decided, and of the entire situation in this cause, your petitioner asks that the said transcript of record showing, among other things, the denial of your petitioner's petition for rehearing on the 24th day of April, 1903, and the said opinion of said Supreme Court and its said judgment of affirmance, and the said abstract of record and the said two printed briefs and arguments and the said petition for rehearing be deemed and treated as a part of this petition for writ of error.

And so it is that your petitioner claims and shows that in and by the said action and judgment of the said

Circuit Court of Cook County and in and by the said action and opinion and judgment of the said Supreme Court of Illinois, your petitioner's rights under the Constitution of the United States and its amendments have been invaded and disregarded and denied in that he has thus been and is deprived of the rights, privileges and immunities secured to him by said constitution and its amendments and deprived of property without due process of law and deprived of the equal protection of the laws guaranteed to him by the said constitution and its amendments, particularly by the fourteenth amendment to the said constitution, and his property taken without due process of law, and he deprived of equal protection of the laws contrary to section 1 of the fourteenth amendment to said constitution, all of which rights and privileges and immunities were duly insisted upon in these proceedings by your petitioner, as above shown, and as to all of which the decision and action and judgment of the said Circuit Court and the opinion and action and judgment of the said Supreme Court have been and are against your petitioner and against his petitions and contentions and in favor of the validity of said statute and of said proceedings and against the said rights, privileges and immunities of your petitioner and to the damage and prejudice of your petitioner and contrary and repugnant to the Constitution of the United States and its amendments; and your petitioner claims and insists that not only is said statute contrary to the Constitution of the United States and the said proceedings thereunder, but particularly the said action of the said Supreme Court of Illinois in basing its decision against your petitioner on an issue not raised or even hinted at in the pleadings in said cause, namely, as to the character and purpose and

effect of the said general deed, and without an opportunity of your petitioner to be heard on such an issue either in pleadings or in brief or in argument, and while at the same time rejecting and ignoring the repeated offers of your petitioner to prove that he had not acquired or received any right, title or interest in or to the said lot in question since the making of the said deed, and the holding of your petitioner liable for the said taxes assessed against the said lot at a time when your petitioner had no interest therein, and liable for said forfeitures at the time your petitioner had no interest in said lot, as shown by the undisputed proof, all this your petitioner respectfully claims and insists is in violation of the Constitution of the United States and its amendments in the particulars above named and otherwise.

Wherefore your petitioner prays that a writ of error be allowed in said cause to remove the same from the said Supreme Court of Illinois to the said Supreme Court of the United States, and that he be permitted to give a bond with such conditions and in such amount and with such surety as may be required, and that upon the giving of such bond, it be ordered that the said writ of error operate as supersedeas in said cause and that a citation issue according to law, and for such other and further and different relief in the premises as may be proper under the law and under the rules of the said Supreme Courts.

And your petitioner will ever pray, etc.

Dated June 1, 1903.

ASSIGNMENT OF ERRORS.

IN THE SUPREME COURT OF THE UNITED STATES.

Now comes George F. Harding, plaintiff in error in the above entitled cause, and says that by the foregoing record the said Supreme Court of Illinois is shown to have erred in said cause, as follows:

1. In affirming the said judgment of the said Circuit Court of Cook County, Illinois.

2. In not reversing the said judgment.

3. In not holding the said statute under which the said suit is brought invalid by reason of its being contrary to the Constitution of the United States.

4. In not holding that the said statute, namely, Section 230 of the Act of the legislature of Illinois entitled "An Act for the Assessment of Property and for the Levy and Collection of Taxes," approved March 30, 1872, in force July 1, 1872, was and is a provision for the taking of property without due process of law, and for a deprivation of the rights, privileges and immunities secured to the citizens of the United States, including the plaintiff in error herein, by the said constitution and its amendments, and a deprivation of the equal protection of the laws guaranteed to the said citizens, including the said plaintiff in error, by the said constitution and its amendments, particularly by the fourteenth amendment to the said constitution, and especially Section 1 of the said fourteenth amendment, all of which rights, privileges and immunities were duly insisted upon in these proceedings by the said plaintiff in error and as to all of which the decision and action and judgment of the said Circuit

Court of Cook County in said cause and the opinion and action and judgment of the Supreme Court of Illinois were and are against the said plaintiff in error and against his contentions in said cause and in favor of the validity of the said statute and said proceedings and against the said rights, privileges and immunities of the plaintiff in error and to his damage and prejudice and contrary to and repugnant to the said Constitution of the United States and its amendments, particularly those portions thereof above referred to.

5. The said Supreme Court of Illinios further erred in basing its decision and opinion in said cause, and its judgment therein, on an issue not raised or even hinted at in the pleadings in said cause, namely, as to the character and purpose and effect of the said general deed or conveyance in evidence in said cause made by the said plaintiff in error as grantor to the Chicago Real Estate Loan and Trust Company as grantee, dated June 10, 1896, and duly recorded on July 2, 1896, without an opportunity to said plaintiff in error to be heard on such issue either in pleading or in proof or in argument, and while at the same time rejecting and ignoring the repeated offers of the plaintiff in error to prove upon the trial of said cause that he had not acquired or received any right, title or interest in or to the said lot in question since the making of the said deed, and holding the plaintiff in error liable for the taxes assessed against the said lot and forfeitures thereon at a time when he had no interest in the said lot as shown by the undisputed proof in said cause, all of which was and is in violation of the Constitution of the United States and its amendments in the particulars above named and otherwise.

6. The said Supreme Court further erred in said

cause in basing its decision and opinion and judgment therein upon an issue and point in no way raised or hinted at in the pleadings or the proof or in the contentions of the parties to said suit, namely, upon the point that the said general deed was colorable or dishonest, thus deciding the entire case upon an issue never raised and never heard and never tried and in no way involved in the case, thus depriving the plaintiff in error of the equal protection of the laws and of the rights to be heard in pleadings and proof on such issue and thus taking his property without due process of law, all in violation of the said Constitution of the United States and its amendments.

7. The said Supreme Court of Illinois erred in holding and deciding in said cause that the tax records of Cook County, Illinois, offered by the defendant in error upon the trial of said cause tended to prove ownership of the said lot in question by the said plaintiff in error; and in holding and deciding that the items in the tax warrant for the year 1897 on the said property were charged to the plaintiff in error and merged into a judgment; and in holding and deciding that the plaintiff in error appeared in the County Court of said county and objected to the validity of the tax and that judgment was rendered against him as owner—all of these several holdings and decisions being contrary to the undisputed proof in the said cause and therefore a taking of property without due process of law and a deprivation of the equal protection of the laws and a violation of the said Constitution of the United States and its amendments in these particulars and in the other particulars above named, there being no proof whatever in said record of any judgment in the said County Court in or for the

said years 1897 or 1898 and no proof whatever that the said taxes or any part thereof were ever merged in a judgment against the plaintiff in error as owner or otherwise or charged against him as owner or otherwise, and there being no proof that the plaintiff in error objected to the said tax in the said County Court as owner of the said lot.

8. The said Supreme Court of Illinois further erred in said cause in holding and declaring and adjudging that the said conveyance was colorable and did not pass title to said lot and that therefore the plaintiff in error remained the real owner of the said lot and liable as such owner for the amount of the said judgment, such holding and decision and judgment being without the slightest proof in said record even tending to show a revesting of any title or interest in or to the said lot in the plaintiff in error subsequent to the making of the said conveyance, which conveyance was conceded upon the trial of said cause to be valid and held valid by the said trial court and was not attacked by either pleadings or proof on such trial, and no issue was presented under which it could be attacked, and on the said trial the plaintiff in error repeatedly offered to prove that no interest in or to said lot was ever acquired or received by him subsequent to the making of said conveyance, which offers of proof were rejected by the said trial court, and exceptions of the plaintiff in error were duly preserved to such rulings, and the same were duly assigned as error in the said Supreme Court of Illinois and insisted on there by the plaintiff in error as grounds for the reversal of the said judgment, from all of which it duly appears that the plaintiff in error has been thus deprived of property without due process of law and deprived of the equal protec-

tion of the laws and his rights, privileges and immunities secured to him under the Constitution of the United States and its amendments, thus invaded, disregarded and denied.

9. Said Supreme Court of Illinois further erred in said cause upon the grounds and for the reasons stated and shown in and by the petition of the plaintiff in error under date of June 1, 1903, addressed to the Chief Justice of the Supreme Court of Illinois and duly filed in this cause, and the suggestions and brief attached to and filed with the said petition, all of which are for greater certainty hereby referred to and made a part of this Assignment of Errors.

10. The said Statute of Illinois under which this action is brought as construed by the Supreme Court of Illinois in its opinion and judgment in this present suit makes the plaintiff in error personally liable in this action for the taxes levied and assessed in the years 1879 to 1896, inclusive, against the said lot, without any proof showing or tending to show ownership of said lot by the plaintiff in error at any time prior to the making of said deed dated June 10, 1896, and the said statute as thus construed is therefore in violation of the said Constitution of the United States and of the several amendments thereto, above referred to, and is a taking of property without due process of law and a denial to the plaintiff in error of the equal protection of the laws and of his other rights, privileges and immunities secured to him by the provisions of the said constitution and of said amendments thereto, and the Supreme Court of Illinois therefore erred in its said judgment and ought to have held the said statute invalid by reason of its being in violation of the said constitution and the said amendments in the particulars above shown.

11. The said statute of Illinois as construed by the opinion and judgment of the Supreme Court of Illinois in this present proceeding holds the plaintiff in error personally liable in this action for the taxes levied and assessed against the said lot in the years 1897 to 1900, inclusive, notwithstanding the affirmative and undisputed proof that the plaintiff in error had no interest in or to the said lot subsequent to the making of the said deed of June 10th, 1896; and the said statute as thus construed is in violation of the said Constitution of the United States and of the several amendments thereto, above referred to, and the said statute and said proceedings thereunder are a denial to the plaintiff in error of the equal protection of the laws and of his other rights, privileges and immunities secured to him by the provisions of the said constitution and of said amendments thereto, and are a taking of property without due process of law; and the Supreme Court of Illinois therefore erred in its said judgment and ought to have held the said statute invalid by reason of its being in violation of the said constitution and of the said amendments in the particulars above shown.

12. As clearly appears from the opinion of the Supreme Court of Illinois in this cause, that court based its said decision against the plaintiff in error in the said cause on the alleged ground that the said deed of June 10th, 1896, was merely colorable and not made for an honest purpose and did not carry to the grantee named therein all interest of the said grantor, the plaintiff in error, in and to the said lot at the time of the making of said deed, notwithstanding the fact that the making and delivery of said deed was duly proved and was undisputed, and its validity and effect as a conveyance

was expressly conceded by the counsel for the defendants in error on the trial of said cause and its validity and effect as a conveyance was held by the trial court in its propositions of law without objection or exception by the counsel for defendants in error, and no issue was presented either in the pleadings or proof attacking the validity or effect of the said deed as a conveyance or relating in any way to the character or purpose or effect of the said deed, and no pleadings were presented under which proof upon any of these questions would be admissible, and the said action of the said Supreme Court of Illinois in thus holding the said deed invalid and inoperative as a conveyance without any pleadings under which such issue or such questions could or did arise and without an opportunity to the plaintiff in error to be heard thereon, either in pleadings or in proof or in argument, was and is a taking of property without due process of law and a denial to the plaintiff in error of the equal protection of the laws, and a denial to him of the rights, privileges and immunities secured to him by the said Constitution of the United States and its amendments, and was and is in these several particulars and otherwise in violation of the said constitution and of the amendments thereto above referred to, and was therefore error on the part of the said Supreme Court of Illinois.

13. As appears from the provisions of the said Statute of Illinois and from the declaration in this suit and from the plea interposed by the plaintiff in error, and the notice of his defences filed with said plea, and from the propositions of law held in said cause, and from the said opinion of the said Supreme Court of Illinois in said cause, and from other portions of the record in this cause, a vital and material issue in said cause was as to

the ownership of the said lot in question by the plaintiff in error in the years 1897, 1898, 1899 and 1900, and the said deed of June 10th, 1896, having been admitted in evidence, and its validity and effect as a conveyance having been expressly conceded by the counsel for the defendants in error, and its validity and effect as a conveyance having been held by the trial court, the plaintiff in error thereupon had the right under the Constitution of the United States and its amendments, to show affirmatively on the trial of said cause, that he, the plaintiff in error, had never received or acquired any interest whatsoever in or to the said lot subsequent to the making of the said deed of June 10th, 1896; and the refusal of the trial court to receive such proof offered by the plaintiff in error was a violation of the said constituitional rights of the plaintiff in error, and the plaintiff in error having duly made and preserved his exceptions to the said action of the said trial court, and having duly assigned the same in the Supreme Court of Illinois as error upon the part of the trial court, the failure of the Supreme Court of Illinois to hold the same as error and on that ground reverse the said judgment of the said trial court was a denial to the plaintiff in error of his constitutional rights; and the said action of the said Circuit Court and of said Supreme Court of Illinois were each a taking of property without due process of law, and a denial to the plaintiff in error of the equal protection of the laws and a denial to him of the rights, privileges and immunities secured to him by the said constitution and its said amendments, and therefore contrary to the said constitution of the United States and its amendments, in these particulars, and was therefore error upon the part of the said trial court and upon the part of the said Supreme Court of Illinois, respectively.

14. The holding and decision of the Supreme Court of Illinois in its said opinion and judgment in this cause, as appears from the said opinion and the said judgment, that the point in relation to the said constitutionality of the said statute had been waived by the plaintiff in error, was error upon the part of the said Supreme Court of Illinois, for it appears from pages 16 and 17 of the transcript of record herein, and from pages 5 and 6 of the printed abstract of said record filed in the Supreme Court of Illinois in said cause, and now duly certified by the clerk of that court as a part of the present record in this cause, that the plaintiff in error duly raised the said point as to the constitutionality of the said statute in his notice of defences filed with his plea in said cause; and it further appears from pages 142 to 146, inclusive, of said transcript of record, and from pages 62 to 66, inclusive, of said printed abstract, that the points numbered 26 and 27 in support of the motion for new trial, made by plaintiff in error, expressly raised the question that the said statute is a taking of property without due process of law, and is otherwise in violation of the Constitution of the United States, while point number 25 in support of the said motion for new trial, raised the question as to the constitutionality of said statute under the constitution of Illinois and as appears from page 147 of the said transcript of record and page 67 of said printed abstract, the plaintiff in error duly excepted to the overruling of the said motion for new trial and to the finding and judgment of the trial court; and it further appears from pages 151 and 152 of the said transcript of record and from pages 67 and 68 of said printed abstract, that the eleventh assignment of error in the Supreme Court was that the finding and judgment of the trial

court "were erroneous for the several reasons stated in the points filed in support of the motion to set aside the finding and grant a new trial;" and it appears from the first brief and argument filed for plaintiff in error in the Supreme Court of Illinois in said cause that the said point was duly raised and presented near the end of page 8 thereof and again near the middle of page 12; and in the paragraph numbered 13 on page 10, the formal statement of points filed in support of motion for new trial and the formal assignment of errors are referred to "for further and more detailed statement of points relied on for reversal;" and on page 15, the said brief, in closing, refers to the argument commencing on the next page "for further statement of points;" and on page 26, near the end of that page, it is stated that the questions raised as to the constitutionality of the statute are submitted "without further argument." The said brief and argument filed in the Supreme Court has been duly certified by the clerk of that court as a part of the present record and the same is hereby referred to for greater certainty as a part of these assignments of error. And below the middle of page 34 of the reply brief and argument for the plaintiff in error, which was filed in said Supreme Court of Illinois in said cause and which has been duly certified by the clerk of that court as a part of this present record, and which is hereby referred to and made a part of these assignments of error, the statement is made by counsel for plaintiff in error that "as to our contentions * * * as to the unconstitutionality of the statute, these contentions, we think, are sufficiently stated in our former brief and argument." And, beginning near the end of page 27 and ending on page 28 of the petition for rehearing filed by the plaintiff in error in the

said Supreme Court of Illinois in said cause, which petition for rehearing has been duly certified by the clerk of that court as a part of this present record, it was stated as follows, namely; "Appellant (now plaintiff in error) wishes to be understood as insisting on, not as waiving, his assignments of error grounded upon the refusal of the trial court to hold the statute on which this action is based to be contrary to the constitution of Illinois and to the Constitution of the United States, respectively * * *. Insistence on these assignments appeared on page 8 of the first brief. * * * The questions were raised and are preserved by the objections to jurisdiction, motion to dismiss this suit, by the pleadings, in the propositions of law, in the motion for new trial, and by the assignment of errors."

15. The said Supreme Court erred in denying the said petition of the plaintiff in error for a rehearing in said cause.

16. The said denial of the said petition for rehearing was in violation of the Constitution of the United States and its amendments in the particulars already referred to in these assignments of error.

17. The said finding and judgment of the said Circuit Court of Cook County, Illinois, and the affirmance of the said judgment by the Supreme Court of Illinois, were, respectively, contrary to the undisputed evidence in said cause, and contrary to the law, and the same were and are, respectively, in violation of the Constitution of the United States and its said amendments, in the particulars above referred to in these assignments of error.

Wherefore, the plaintiff in error, herein, prays that the said proceedings and final judgment of the Supreme

Court of Illinois herein, be reviewed by the Supreme Court of the United States; and that the final judgment of the said Supreme Court of Illinois, and its order denying the said petition for rehearing in said cause, and the said judgment of said Circuit Court of Cook County, Illinois, be respectively reversed and set aside, and that the Supreme Court of the United States will grant and enter herein such further or other and different orders and directions herein as law and justice in the premises may require.

POINTS.

I.

THE PROHIBITIONS OF THE FOURTEENTH AMENDMENT REFER TO ALL THE INSTRUMENTALITIES OF THE STATE, TO ITS JUDICIAL AS WELL AS TO ITS EXECUTIVE AND LEGISLATIVE AUTHORITIES.

Chicago, Burlington & Quincy R. R. Co. v. *Chicago*, 166 U. S., 226, 233.

Ex parte Virginia, 100 U. S., 339, 346-7.

Yick Wo v. *Hopkins*, 118 U. S., 356.

II.

IT IS SUFFICIENT IF IT APPEARS FROM THE RECORD THAT A RIGHT CLAIMED UNDER THE FEDERAL CONSTITUTION WAS SPECIALLY SET UP OR CLAIMED IN THE STATE COURT IN SUCH MANNER AS TO BRING IT TO THE ATTENTION OF THE COURT. THE RIGHT MAY BE ASSERTED BY PLEADINGS, OR ON MOTION TO SET ASIDE VERDICT AND GRANT A NEW TRIAL, STATING, AS GROUNDS THEREFOR, THAT THE SEVERAL RULINGS OF THE COURT IN EXCLUDING PROPER EVIDENCE FOR THE DEFENDANT, THE STATUTE UNDER WHICH THE PROCEEDINGS WERE INSTITUTED, THE VERDICT AND THE JUDGMENT BASED UPON IT WERE ALL CONTRARY TO THE CONSTITUTIONAL PROVISIONS OF THE FOURTEENTH AMENDMENT.

Chicago, Burlington & Quincy R. R. Co. v. *Chicago*, 166 U. S., 231.

III.

WHEN THE TRIAL COURT OVERRULED THE MOTION FOR NEW TRIAL, STATING GROUNDS SUCH AS THOSE MENTIONED UNDER POINT II. AND ENTERED JUDGMENT, IT NECESSARILY HELD ADVERSELY TO THE CLAIMS OF FEDERAL RIGHTS DESIGNATED IN SAID STATED GROUNDS.

Chicago, Burlington & Quincy R. R. Co. v. *Chicago*, 166 U. S., 231.

IV.

DUE PROCESS OF LAW IMPLIES THE RIGHT OF THE PERSON AFFECTED, NOT ONLY TO BE PRESENT BEFORE THE TRIBUNAL WHICH PRONOUNCES JUDGMENT, BUT ALSO TO BE HEARD BY TESTIMONY IN PROOF OF ANY FACT WHICH WOULD BE A PROTECTION TO HIM AND HIS PROPERTY, AND TO HAVE THE RIGHT OF CONTROVERTING, BY PROOF, EVERY MATERIAL FACT WHICH BEARS ON THE QUESTION OF RIGHT IN THE MATTER INVOLVED. THE LAW OF THE LAND REQUIRES AN OPPORTUNITY FOR TRIAL; AND THERE CAN BE NO TRIAL IF ONLY ONE PARTY IS SUFFERED TO PRODUCE HIS PROOFS.

Cooley Const. Lim., 368-9.

Zeigler v. *South, etc., Ala. R. Co.*, 58 Ala., 594.

Calhoun v. *Fletcher*, 63 Ala., 574.

State v. *Billings*, 55 Minn., 475.

Hovey v. *Elliott*, 167 U. S., p. 414.

Windsor v. *McVeigh*, 93 U. S., 274.

McVeigh v. *U. S.*, 11 Wall., 267.

V.

PLAINTIFF IN ERROR IS DEPRIVED OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW BY THE JUDGMENT AFFIRMED IN THIS CASE, BECAUSE HE WAS DENIED THE RIGHT TO PROVE BY EVIDENCE OFFERED IN REBUTTAL THAT HE NEVER RE-ACQUIRED, OWNED, WAS INTERESTED IN, OR POSSESSED OF, THE PROPERTY INVOLVED AFTER HE CONVEYED IT AWAY BY THE DEED OF JUNE 1896.

See authorities under previous points.

VI.

THERE BEING NO AVERMENT IN THE DECLARATION, NOR ANY EVIDENCE WHATEVER THAT THE PLAINTIFF IN ERROR OWNED THE PROPERTY IN ANY YEAR FROM 1879 TO 1896, OR THAT IT WAS ASSESSED IN HIS NAME DURING ANY ONE OF SAID SEVENTEEN YEARS, AND IT BEING PROVED BY THE RECORD THAT FORFEITURES COVERING THOSE YEARS MAKE UP THE BULK OF THE JUDGMENT AFFIRMED, ALL OF IT IN FACT EXCEPT ABOUT $125 OF TAXES OF 1890, NOT DUE WHEN THIS SUIT WAS BEGUN, THE ENTRY AND AFFIRMANCE OF SAID JUDGMENT WITHOUT PLEADINGS OR PROOFS ARE SEVERALLY DENIALS OF DUE PROCESS OF LAW WHEREBY PLAINTIFF IN ERROR IS DEPRIVED OF HIS PROPERTY IN VIOLATION OF THE SEVERAL PROVISIONS OF THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION.

See citations under previous points.

VII.

ANY ACT OF THE LEGISLATURE OR ACTION OF THE COURTS WHICH ARBITRARILY TAKES AWAY THE PROPERTY OF A AND GIVES IT TO B, OR MAKES ONE PERSON LIABLE FOR THE DEBTS OR ACTS OF ANOTHER, DEPRIVES HIM OF DUE PROCESS OF LAW.

Camp v. *Rogers*, 44 Conn., 291.
Loan Association v. *Topeka*, 20 Wall., 663.
C. B. & Q. R. R. Co. v. *Chicago*, 166 U. S., 237.

The only persons personally liable under section 230 for taxes assessed from 1879 to 1896, were those owning the property in those several years at the times of such assessments.

Biggins v. *The People*, 96 Ill., 381.
The People v. *Winkelmman*, 95 Ill., 412.
Greenwood v. *Town of La Salle*, 137 Ill., 230.
Sec. 230, Chap. 120, of Revised Statute of Illinois, 3 Starr & Curtis Stat., pp. 3501-02, especially last seven lines of said section.
Sec. 58 and 59 of same chapter, 3 Starr & Curtis Stat., 3425-6.

The judgment affirmed in this case therefore makes the plaintiff in error liable for the debts and neglects of other persons. The rights of plaintiff in error under the provisions of the fourteenth amendment are violated by the judgment as entered and affirmed, and by the said section 230, as construed, administered and enforced thereby.

VIII.

THE ACTION OF THE SUPREME COURT OF ILLINOIS IN BASING ITS DECISION OPINION AND JUDGMENT UPON AN ISSUE AND POINT IN NO WAY RAISED OR HINTED AT IN THE PLEADINGS OR THE PROOF OR IN THE CONTENTIONS OF THE PARTIES, NAMELY, THE POINT THAT THE GENERAL DEED OF JUNE 10TH, 1896, WAS COLORABLE AND DISHONEST, DEPRIVED PLAINTIFF IN ERROR OF ALL RIGHT AND OPPORTUNITY TO BE HEARD IN PLEADINGS AND PROOF ON SUCH ISSUE AND WAS A TAKING OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS UNDER THE SAID FOURTEENTH AMENDMENT.

See citations under point IV.

IX.

THE ACTION OF SAID STATE SUPREME COURT, AS ABOVE FULLY SET FORTH IN POINT VIII, WHILE AT THE SAME TIME IGNORING OR SANCTIONING THE REJECTION BY THE TRIAL COURT OF THE REPEATED OFFERS OF PLAINTIFF IN ERROR TO PROVE UPON THE TRIAL THAT HE HAD NOT RE-ACQUIRED ANY RIGHT, TITLE, INTEREST OR POSSESSION OF SAID PROPERTY AFTER THE MAKING OF SAID DEED AND HOLDING HIM LIABLE FOR TAXES ASSESSED AGAINST THE SAME AND FORFEITURES THEREON DURING THE YEARS 1897-98-99 AND 1900, WHEN HE IS SHOWN TO HAVE HAD NO INTEREST IN SAID LOT, WAS A DEPRIVATION WITHOUT DUE PROCESS OF LAW OF PLAINTIFF IN ERROR'S RIGHTS OF PROPERTY AND OTHER RIGHTS SECURED TO HIM BY THE SEVERAL PROVISIONS OF SAID FOURTEENTH AMENDMENT.

X.

AS THE MAKING AND DELIVERY OF THE SAID DEED OF JUNE 10TH, 1896, WERE DULY PROVED AND UNDISPUTED, AND ITS VALIDITY AND EFFECT AS A CONVEYANCE WERE HELD BY THE TRIAL COURT IN ITS PROPOSITIONS OF LAW WITHOUT OBJECTION OR EXCEPTION, OR ASSIGNMENT OF ERROR THEREFOR, BY COUNSEL FOR DEFENDANT IN ERROR, AND AS NO ISSUE WAS PRESENTED IN PLEADINGS OR PROOFS RELATING TO ITS CHARACTER, PURPOSE OR EFFECT, THE DECISION OF THE SUPREME COURT OF ILLINOIS AND ITS JUDGMENT BASED THEREON, HOLDING AND ADJUDGING THAT SAID DEED WAS MERELY COLORABLE, NOT MADE FOR AN HONEST PURPOSE AND INVALID AND INOPERATIVE AS A CONVEYANCE OF TITLE, WERE AND ARE A TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW, IN VIOLATION AND DEFIANCE OF THE CONSTITUTION OF THE UNITED STATES AND ITS PROVISIONS CONTAINED IN THE FOURTEENTH AMENDMENT THEREOF.

Same authorities cited under point IV.

XI.

THE SAID DEED OF JUNE 10TH, 1896, TO THE CHICAGO REAL ESTATE LOAN & TRUST COMPANY CARRIED TO SAID GRANTEE ALL TITLE AND INTEREST OF PLAINTIFF IN ERROR IN OR TO SAID LOT IN QUESTION.

Frey v. *Clifford*, 44 Cal., 335.

Pettigrew v. *Dobblaur*, 63 Cal., 396.

Field v. *Huston*, 21 Me., 8 Shep., 69.

Bird v. *Bird*, 40 Me., 398.

Fitzgerald v. *Libby*, 142 Mass., 235; 7 N. E., 917.

Harmon v. *James,* 15 Miss. (7 Smedes & M.), 111; 45 Am. Dec., 296.
First National Bank v. *Hughes,* 10 Mo. Ap., 7.
Brown v. *Warren,* 16 Nev., 228.
Brown v. *Wood,* 6 Rich. Eq., 155.
Sally v. *Gunter,* 13 Rich. Law, 72.
Harvey v. *Edens,* 69 Tex., 420, 6 S. W., 306.
Smith v. *Westall,* 76 Tex., 509, 13 S. W., 540.
Brigham v. *Thompson,* 12 Tex. Civ. App., 562, 34 S. W. 358.
Barnes v. *Bartlett,* 47 Ind., 98.
Patterson v. *Snell,* 67 Me., 559.
Stewart v. *Cage,* 59 Miss., 558.
Barton's Lessee v. *Morris' Heirs,* 15 Ohio, 408.

XII.

THE HOLDING AND DECISION OF THE SUPREME COURT OF ILLINOIS IN ITS OPINION AND JUDGMENT THAT THE POINT IN RELATION TO THE CONSTITUTIONALITY OF THE STATUTE HAD BEEN WAIVED BY PLAINTIFF IN ERROR WAS ERROR ON THE PART OF SAID SUPREME COURT FOR THE REASONS AND FACTS SET FORTH AT LARGE IN THE 13TH ASSIGNMENT OF ERRORS FILED IN THIS COURT, *ante* pp. 36-37.

XIII.

IT IS SHOWN BY THE FACTS AND REFERENCES SET FORTH IN THE 7TH ASSIGNMENT OF ERROR HEREIN, *ante, pp.* 32-33, THAT THE SUPREME COURT OF ILLINOIS WAS CLEARLY MISTAKEN AS TO THE SUPPOSED FACTS RECITED IN ITS OPINION AS TENDING TO PROVE OWNERSHIP IN DEFENDANT SUBSEQUENT TO THE DATE OF THE DEED. THE ITEMS IN THE TAX WARRANT FOR 1897 ON THIS LOT WERE NOT CHARGED TO DEFENDANT AND MERGED INTO A JUDGMENT. NO JUDGMENT IS SHOWN BY THE RECORD EITHER AGAINST THE LOT OR AGAINST HIM AS OWNER. HE DID NOT APPEAR AND OBJECT TO THE TAX AS OWNER AND IT WAS ERROR AND DENIAL OF DUE PROCESS OF LAW TO REFUSE, AS THE TRIAL COURT DID, TO ALLOW HIM AND HIS WITNESSES TO PROVE THAT HE DID NOT.

ARGUMENT.

In view of the full statement of *the law* contained in foregoing points I to VI, inclusive, and the extended statement of the *facts* heretofore made, no amplification of *argument* as to those points is deemed necessary.

With reference, however, to what is said under point VII as to who is *personally* liable under section 230, the following suggestions and quotations are submitted:

In *Biggins* v. *The People, supra* (96 Ill., 383), Chief Justice Dickey said:

> "The defendant became the owner of the property in November, 1877. The taxes claimed upon the trial consisted of taxes for the year 1878, *and of back taxes for the years* 1871-77, *and the intervening years.* The taxes for 1878 amounted to only about $250, yet judgment was rendered for the sum of $5,679.25. The bill of exceptions shows that more than *$5,000 of this sum consisted of the back taxes from 1871 to 1877, inclusive.*"

The judgment was reversed "for charging the defendant with *a personal liability* for taxes for the years *prior to the time when he became owner*" (p. 384).

Referring to a misleading argument in that case, Chief Justice Dickey said (pp. 383-4):

> "It is said by counsel that the statute (Sec. 232, now 230) does not say 'against the owner of the property *at the time the taxes accrued.*'
>
> "It is true this clause of the statute is silent as to the person against whom such action is to be brought. A clear inference is, that the action is to be brought *against the person personally liable,* under the statute, to pay the tax for which the property was forfeited.

"Counsel say that the action must evidently be brought against the owner of the land when last forfeited. This position is unwarranted."

To the same effect is *Carrington* v. *The People,* 195 Ill., 485. Both cases hold the same thing, viz.: "That the declaration should *state the year* for which the supposed tax upon the property was *levied,* and should also state the defendant was the owner * * * on the first day of May, *in that year*" (96 Ill., 383), and there should be "*proof* that the defendants were the owners of the property *in the years* for which the unpaid taxes were *levied.*" (Syllabus 3, 195 Ill., 485.)

The "proof" wholly failed in the *Biggins* case except as to the tax of one year, amounting to $250, out of $5,679, just as it wholly fails in this case, except as to one year, amounting to $125, (not due) out of $2,-123; but in the *Carrington* case the proof was full and complete that there *were no forfeitures other than or prior to those incurred by the defendants themselves* in the several years *when they were the owners* of the property, *and when it was assessed* for the forfeited taxes sued for.

On page 486 (195 Ill.) the court goes carefully over the evidence and arrives at the conclusion that the defendants' ownership and taxable interest covered the entire time for which they were sought to be held for the taxes *levied within that time.*

The declaration in the present case avers that the taxes were "assessed and levied" in and for each year, 1897-8-9, 1900, but it is clear from the proof that the bulk of the judgment is made up of forfeitures for taxes levied and assessed during eighteen years prior to the first of those years (1879 to 1897) for unknown amounts and against unknown owners.

It is true that section 129 of the Revenue Law requires the county clerk in making up the amount of tax due on forfeited real property for the current year, to add to the taxes of the current year the amount of back tax, interest, penalty and printers' fees remaining due on such real property, with one year's interest at 10 per cent., etc.

It is to be observed with reference to said section 129:

First. That it was not framed for the purpose of creating or imposing any *personal liability* upon any one, but only for the purpose expressed, namely, "making up the amount of tax due on such *real property* for the current year."

Second. That it clearly recognizes "the tax of the current year" as one thing, and the back taxes and "forfeited" taxes, etc., as a different thing.

Third. That the back taxes, etc., are merely *added* to the current year's tax; that such addition is not an *assessment* for the current year made by an *assessor*, but a mere *computation* by a *clerk;* the whole proceeding being *in rem*, not *in personam*, its sole object being not to fasten liability for all or any of said taxes upon the *person*, but upon the *land*.

Greenwood v. *Town of La Salle*, 137 Ill., on page 230, points out the non-liability of the *person* and the liability of the land for interest penalties on forfeitures, even in the case of taxes assessed against the owner in and for the same year.

Mr. Justice Wilkin said:

> "The amount due the town at the time the property was forfeited was $42.76. The fact that this amount might have been carried forward, with 10 per cent. annual interest, and added to the next assessment, and so on annually, until collected by

> that means, *gives no authority for the recovery of the same rate of interest in a* PERSONAL *action. Neither can it be said* because a redemption can only be made from a forfeiture by paying 10 per cent. interest, therefore, *that rate is recoverable in an action of* DEBT."

As already shown section 230 merely supplies the remedy to enforce a *personal* liability created by section 59. It does not create, extend or enlarge that liability. (*Biggins* v. *The People*, 96 Ill., 383-4.)

In the *Carrington* case the action was brought, as already shown, against the persons liable for the tax for which the property was forfeited, and the language used by the court must be read with reference to the facts before it in that case, and to like facts in other and similar cases.

When section 230 provides for an action of debt in the name of The People for the whole amount due on forfeited property, the meaning must be understood to be that the action must be brought against the *owner* for the amount personally due *from him* under section 59, and not for the amount personally due from *others* under said section under other assessments in and for *other* years.

The clause of said section 230 relating to the recovery of personal property tax clearly brings out this meaning. Its language is that the action of debt lies "for the recovery of any personal property tax due *from such person, firm or corporation.* The meaning is, however, further clarified by the following words:

> "This act shall apply to all taxes heretofore *levied against any person, firm or corporation* and now upon any assessment book or roll."

The concluding paragraph of the section is in harmony with and fortifies the meaning we have imputed to the preceding paragraph. It reads as follows:

> "In any suit or trial for forfeited taxes the fact that real estate or personal property is *assessed to a person, firm or corporation* shall be *prima facie* evi- that *such* person, firm or corporation was the owner thereof, and liable for the taxes for the year or years *for which the assessment was made,* and such fact may be proved by the introduction in evidence of the *proper assessment book* or roll or other competent proof."

Here we see:

First. That the fact which is to be *prima facie* evidence of ownership and personal liability of the owner is an ASSESSMENT, and *nothing but an essessment,* to a person, firm or corporation *as owner.*

Second. The liability, of which such *assessment* is made *prima facie* evidence, is liability for the taxes *for the year or years* for which the *assessment* was made, not for the taxes or assessments of or in any other year or years for which *other* persons were personally liable.

On the question of ownership subsequent to 1896, the Supreme Court's opinion says:

> "The chief error urged by appellant is that the plaintiff failed to prove that George F. Harding was the owner of the property against which the taxes were assessed."

His ownership when the assessments were made in 1897-8-9 and 1900 is averred in the declaration. It was for the plaintiff to prove said averments, both as to ownership and *assessments in those years.*

The opinion proceeds:

> "The record shows that the plaintiff offered in evidence a certified copy of the collectors' warrants

of 1897, 1898, 1899 and 1900, the tax judgment sale redemption and forfeiture record for the year 1899, showing the forfeiture of the premises in question for that year and prior years, as entered in the year 1900 for the taxes of 1899."

Then, after quoting from section 230, *supra*, the opinion proceeds:

"The foregoing proof, under the provisions of this section, constituted a *prima facie* case, and established to that extent the ownership of the property in question."

With the utmost deference we submit that this is erroneous, for the following reasons: We beg leave to urge that the collectors' warrants thus admitted in evidence over defendant's objections and exceptions and set out in the record (pp. 45, 49, 53 and 57) are *not the species of evidence*, nor the best or *competent* evidence required by section 230 to make out a *prima facie* case of ownership of the lot *by appellant* in *either of the four years* referred to. Those warrants are at best recitals at second-hand of SUPPOSED assessments and forfeitures in those years, and are not made by statute evidence of the truth of their said recitals.

As to the tax judgment and sale record of 1899, and the judgment entered in 1900 for the taxes of 1899, it is not even claimed that appellant appeared in the County Court to object to said judgment. Whatever that judgment, and judgment and sale record, therefore, may amount to as partial proof of a forfeiture for the taxes of 1899, they have no apparent tendency to prove that appellant was the owner of the lot in 1897, 1898, 1900 or 1901, even if they could be claimed to prove that he was its owner in 1899.

Then as to *forfeitures*, where is there any law making

the recitals on collectors' warrants proofs or evidence of forfeitures in prior years, say 1879 to 1896, or up to 1900?

The prerequisites of a valid forfeiture of land are (1) *a judgment;* (2) *process of sale;* (3) *an offer to sell, and* (4) *a failure to sell for lack of bidders.*

Among the numerous authorities in support of this proposition, the cases of *The People* v. *Henckler,* 137 Ill., 580, and *Biggins* v. *The People,* 106 Ill., 570, are cited.

As to every one of these prerequisites, the plaintiff in error claims that there was a complete failure of proof. For example, there was not even any attempt to show either a judgment or a process of sale or an offer to sell, or a failure to sell in any year except 1900, and as to that year, *no process of sale is shown* and nearly the whole of the aggregate of $1,728.38, referred to in that exhibit under the heading of "Total Amount of Judgment," is embraced in the item of "$1,605.62" under the heading "Amount of Back Taxes and Taxes Forfeited to the State at the Annual Tax Sale for the Year *189*," and this is all the evidence in relation to this large item making up by far the greater portion of the judgment appealed from. It will be noted that it does not appear whether this is back taxes or taxes forfeited, or both, and it does not appear for what year any portion of it was assessed or forfeited except as it is headed "For Year 189."

Again this same exhibit shows both a sale on October 14, 1900, under the heading "When Sold," and shows also a forfeiture to the state, both of which cannot be true, and it does not appear whether the fact of sale or the fact of forfeiture, is true.

The point is not whether any judgment, if any, under which the land was forfeited, prior to 1900, was irregular and not in conformity to law, but *whether,* in point of fact, *the land was forfeited at all* by and through *any* judgment, process of sale, offer to sell and failure to sell

for lack of bidders in any year prior to 1900, and our contention is that this record contains *no proof* of any such prior judgment and proceedings proving any such prior forfeiture in fact. This court is now called upon to decide whether, in the absence of proof of *any* judgment, precept, order of sale and sale without bidders in any year from 1879 to 1900—twenty-one years—it will be judicially held by this court that such judgment, precept and other prerequisites, constituting a forfeiture in fact, existed, upon no better evidence, if it can be called evidence, than the words "forfeitures for A. D. 1879 and subsequent years" in all the warrants set forth in the record. Those recitals, it will be observed, are of the most vague and indefinite character, not even undertaking to specify in what year or years from 1879 down, the supposed forfeitures occurred, nor for what amounts in each or any year, nor who owned or even claimed title in each or any of said years prior to 1897.

Carrington v. *The People*, 195 Ill., *supra*, by no means holds that *tax warrants* and their recitals prove prior forfeitures for a long series of years or for a single year. What it holds is that a *prima facie* case is made by introducing in evidence a certified copy of the tax *judgment*, sale, redemption and *forfeiture record, together with proof that the defendants were the owners of the property in the years* FOR WHICH THE UNPAID TAXES WERE LEVIED. (Syllabus 3.)

The only judgment in evidence, that entered in 1900 (Rec. 65), recites and refers to *no other or former judgment in any previous year;* nor does the tax judgment, sale, redemption and forfeiture record for the year 1899 —upon which said solitary judgment was entered in 1900 —refer to or recite any prior judgment *or other prerequi-*

site of a forfeiture in fact in any year prior to 1899, and said judgment of 1900 entered, as it recites and as the opinion states, upon the tax judgment record for 1899, includes $1,605.52 under the caption "Amount of Back Taxes and Taxes Forfeited to the State on Annual Tax Sale for Year 189—," being the amount recited in the warrant of 1900 as "forfeitures for 1879 and subsequent years—" what year or years being unstated.

Our position is that *there was no prima facie* case, either of ownership or of liability, for the defendant to overcome, because $1,605.62 of the $1,728 judgment entered in 1900 was for back taxes and forfeited taxes, commingled and undiscriminated, *not shown* by the judgment or otherwise *to have been assessed to appellant in any year or years in which he was owner* of the lot, but shown *per contra*, by said judgment record, to have been forfeited *"at annual tax sale for year 189—"* and recited in tax warrant for taxes of 1899 as "forfeitures for 1879 and subsequent years."

There is not in this record any 1898 judgment, process of sale, offer to sell or failure to sell for lack of bidders —all indispensable prerequisites to a forfeiture in fact, saying nothing of a valid forfeiture.

The plaintiff cannot be permitted to aver, as in the declaration in this case that the taxes sued for and recovered by this judgment were *assessed* in each of the years 1897-8-9 and 1900, and that the "said land" was during the same years successively forfeited to the state, without being required to make proof of such averments.

While it is true that as against *the* LAND the forfeiture of any one year is a single item, including current and back taxes, together with forfeitures, costs, etc.—all of which items, *added* together *by the clerk*, not *assessed* by

the *assessor*—are merged into one item and become a new forfeiture as against *the land* by the judgment of the County Court, *when there is such a judgment,* it is *not* true that the owner becomes *personally liable* for any part of said forfeited taxes that were assessed for a year or years prior to that in which he became the owner.

Going upon the mistaken supposition that there was an 1898 judgment, the opinion continues: "His (appellant's) remedy as to that tax, if levied unjustly against him, was by appeal."

That tax, we submit, would have been levied against *the land,* not against *him,* nor would the judgment, had there been one, have been against *him,* but against *the land.* By explicit terms of section 58 the assessment would not have been illegal, if not in *any* owner's name. It is not the object of a tax judgment to adjudicate *who is the owner* of the land, but to subject the *land* to the tax. We may be in error, but we submit that such a judgment is not an adjudication binding upon the world, or upon anybody, that the claimant and objector is the owner of the land.

> "It is *not* true that the appellant objected to the collector's application for judgment *in his own name* AS OWNER, BUT HE WAS SHOWN ONLY (if that document be treated as in evidence) TO HAVE JOINED WITH THE REAL OWNER OF THIS LOT, THE CHICAGO REAL ESTATE LOAN & TRUST COMPANY, in objections embracing this and many other tracts. And even the document itself only recites that the parties were the owners of OR interested in the tracts."

The undisputed testimony of George F. Harding, Jr., in this record established the existence of a General Real Estate and Renting Agency, conducted in appellant's name, having charge and care of this lot for its owner, the Chicago Real Estate Loan & Trust Com-

pany. The full scope of this agency was offered to be shown by appellant and other witnesses, but was we submit, *erroneously* ruled out by the trial judge. Nevertheless said general agency stands proved by the testimony of George F. Harding, Jr. It establishes the fact that appellant, through said general agency, was *"interested"* in said lot, but only as agent.

It might well be, therefore, literally true, as set forth in the objections, that the objectors, the Chicago Real Estate Loan & Trust Company and appellant, were jointly *"interested,"* as the former was *owner* and the latter was the owner's *agent.*

It would be dangerous and startling, indeed, if all real estate agents in Chicago, objecting, as *"interested"* in property, to tax judgments against the same, should be held to make themselves *personally liable,* as owners, for taxes, penalties and forfeitures.

Such objections filed by attorneys for real estate agencies should not, we think, be so overstrained beyond the actual truth and facts of the situation.

The objections did not undertake to state what the interests of the objectors were and certainly the recital is just as much an evidence of ownership by the Chicago Real Estate Loan & Trust Company, one of the parties joining in the objections, as it could possibly be an evidence of ownership by George F. Harding. In truth, when taken in connection with the general deed from appellant to said company, these objections corroborated and confirmed that deed.

In the fifth proposition of law, the trial court held that these objections were not sufficient to show a revesting of any title or interest in the lot in George F. Harding subsequent to his deed to the Chicago Real Estate Loan

& Trust Company; while at the same time holding, in the sixth proposition, that the burden was on the plaintiff to prove such revesting of title.

Appellee did not except to said holdings, nor to any of the holdings of the court on any proposition of law.

But if this court shall be of opinion, after due consideration of the foregoing suggestions, that a *prima facie* case was made out, the next question is whether it was or was not defeated by the deed and other evidence introduced by the defendant below, or would have been defeated had not other proper evidence offered by the defendant been erroneously excluded, in violation of the provisions of the fourteenth amendment.

The remainder of this Argument applies to points VIII, IX, X and XI, as Points XII and XIII need not, we think, be further agued.

THE DEED. HOW CAN IT BE HELD UPON THE ISSUES AND EVIDENCE IN THIS ACTION, NOT TO HAVE BEEN A GOOD CONVEYANCE OF THE LOT AND OF ALL OF GEORGE F. HARDING'S INTEREST AND TITLE, LEGAL AND EQUITABLE, THEREIN TO THE CHICAGO REAL ESTATE LOAN & TRUST COMPANY?

The trial court, after due deliberation, not only held that it was a deed admissible in evidence, and admited it, but said of it, that, being admitted "we would have to say the title was in the grantee until the contrary appeared;" and, in the third proposition of law the court specifically held that the said deed "was a valid and sufficient conveyance of all the interest of the grantor at the time of the making of the deed in or to the property described in the declaration;" and held in the fourth proposition that the fact of subsequent assess-

ments in the name of the grantor was not sufficient to show a revesting of any title or interest in the grantor.

The following colloquy occurred between the court and appellant's counsel, referring to the latter's offer to prove that no title or interest had been reacquired by appellant:

Counsel: "Then the testimony is rejected or refused upon your Honor's ruling that the deed would show the title *as far as the proof is* NOW *completed*, in the Chicago Real Estate Loan & Trust Company;" and to this the court replied: "YES." *The proof as completed* AT THAT TIME included the *assessment rolls, tax warrants,* and the judgment record, etc., so that the court thus announced that the deed itself was sufficient to destroy the *prima facie* case of the plaintiffs, and this was exactly the view of counsel for appellee, who stated: "Now, if you establish that deed, isn't it true * * * it would be valid *until* we rebut it?—thus conceding that the deed would have to be overcome *by new and additional proof* NOT ALREADY BEFORE THE COURT.

Both the court and the counsel for appellees *adhered to this view as to the validity and effect of the deed throughout the trial.*

Plaintiff's counsel never once objected to the introduction of the deed on the ground that it was fraudulent, colorable, fictitious or dishonest, or anything but what it purported to be, namely, an absolute conveyance of all interest in the lot.

There were no pleadings or issues in the case upon which any such objections as the foregoing *could be* raised. Appellant and his counsel had no warning at the trial that any such objections ever would be raised; and therefore had no opportunity to meet and overcome such

objections; and certainly could not anticipate that any court, least of all the Supreme Court, would start or listen to such objections, let alone pass upon them, not merely to the detriment of appellant's financial interests involved in the case, but the disparagement of his honesty and integrity as a man.

In the court below, appellant offered to prove by clear, competent, positive, conclusive evidence that no right, title or interest in or to the lot in question remained in him or had become vested in him, by conveyance or otherwise, subsequent to the making of the deed of June, 1896, and that he *had not been in possession* of the lot since then; but the court below, *erroneously and unconstitutionally,* as we claim, ruled out all such proof, and offers of evidence.

On what theory such ruling could possibly be sustained by the Supreme Court we are unable even to conjecture. It is inconceivable to us why appellant should not have been allowed, by himself and witnesses to prove, as he offered to do, that he never, subsequent to the deed, had or acquired, or became revested in any manner with any title or interest in or possession of the lot. For this error alone, in common fairness, there should have been, we respectfully submit, a reversal of the judgment by the State Supreme Court; and due process of law demands there should now be a reversal of it by this court.

Without any information and without any opportunity given appellant or his witnesses to furnish any information as to the actual transactions between appellant and the Chicago Real Estate Loan & Trust Company, attending the making of said deed, the conclusion that the deed was fraudulent, dishonest and colorable seems to be a very harsh one to reach from the mere fact that five

dollars was the consideration recited in the deed, and that the General Real Estate and Collection Agency conducted in the name but in the absence of appellant, continued to look after the grantee's rents and taxes. Especially is this true when appellant was denied the right to prove and explain the facts connected with the management of said agency, and in the light of the admitted testimony of George F. Harding, Jr., that *among the rents* COLLECTED for different owners by the agency were those for the Chicago Real Estate Loan & Trust Company, and that the VERY CHECKS IN EVIDENCE were collections, BY THE AGENCY, FOR THAT COMPANY, the receipts attached thereto being for the same moneys represented by the checks, and that settlements for said rents were regularly made with Mr. Callow, of Monmouth, Ill., as agent for said company.

The deed of June, 1896, caried over to the grantee, of course, under our statutes, all those existing leasehold interests, rents thereunder, and future rents.

Is it not clear and plain, that for taxes and forfeited taxes assessed in 1897, '8, '9 and 1900, an action of debt would and will lie under section 230 against the Chicago Real Estate Loan & Trust Company, and that said deed is the very strongest evidence of ITS *individual liability?*

It seems to have been overlooked, that even if the deed was fraudulent, appellant cannot be held as owner, because it was not void as between grantor and grantee, nor even as against creditors; but only voidable, and valid until vacated by a creditors' bill or some other proper proceeding, in which fraud was clearly and specifically charged.

Hicks v. *Stevens,* 121 Ill., 192-3, and ref's.

There is no proof in the record as to appellant's financial condition at the time of said conveyance; nor anything militating against his right at that time to convey his property for any consideration he pleased, or without any consideration whatever, and to whom he pleased.

He certainly was not seeking by said conveyance to avoid liabilities—*not yet incurred*—running through the four following years, and *if* he was *personally* liable as owner for assessments in 1896 and prior years, of which there is no proof, he could not escape them by making such conveyance, and should have been sued for such prior assessments instead of such later assessments.

He had the right to suppose that assessors would do their duty, would go by the records of the county and assess the property to his grantee shown by the county records. He was not supposed to come back here from his home in Los Angeles, Cal.,—shown to be his home by the recitals of the deed itself—to perform the assessors' statutory duty for four years or longer; and no inference of fraud arises from his not doing so.

He knew that all taxes and forfeitures were a first lien on the land; and that it could be enforced by foreclosure (106 Ill., 274), as well as by sale for taxes and forfeitures. This record shows that the land at the usual low valuation was worth more than $7,500 (Rec., 19).

He knew that he could be sued personally for all assessments prior to 1897 for the years, if any, in which he was the owner; and that his grantee could be similarly sued for the taxes and forfeited taxes assessed against it in subsequent years. Where then are there any just grounds for convicting him of fraud in the execution of said deed?

We appeal to the court on this and on every other ground to reverse the judgments of the courts below.

If this judgment can stand upon the opinion of the State Supreme Court treating the deed of June, 1896, as a nullity, we cannot see how appellant is ever hereafter to be relieved of *personal liability* for all taxes *hereafter* to be assessed against said lot.

Until the legislature in 1881 gave courts of chancery jurisdiction to enforce tax liens upon real estate by foreclosure, no such right existed. (*The People* v. *Biggins*, 96 Ill., 481.)

It was held in that case that the courts were not called upon to provide a remedy by extending the equitable jurisdiction beyond its recognized limits. No preference was shown to the state over any other suitor. The officers of the state, in the collection of revenue, were held as much bound to observe the statute and to proceed in accordance with it as was any private individual. (*Id.*)

We invoke the application of that principle in this case.

Respectfully submitted,

WILLIAM H. BARNUM,
Attorney and of Counsel for
Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1904.

GEORGE F. HARDING, *Plaintiff in Error,* vs. **THE PEOPLE OF THE STATE OF ILLINOIS,** *Defendant in Error.*	No. 61.

Motion to dismiss the writ of error in the above entitled cause and to affirm the judgment of the Supreme Court of Illinois under rule 6, Section 5.

The People of the State of Illinois, defendant in error, by Robert S. Iles, its attorney, moves that the writ of error of the plaintiff in error to the Supreme Court of the United States in the above entitled cause be dismissed and that the judgment of the Supreme Court of the State of Illinois be affirmed; and respectfully submits the following reasons why the motion should be granted:

1st. An examination of the record in this cause discloses the fact that no constitutional question under the Constitution of the United States is involved in said cause.

a. The action is an action in debt for taxes under the laws of the State of Illinois. And the questions at issue were (1) the validity and amount of the tax, (2) the ownership of the property taxed at the date when the lien of the taxes attached thereto.

Plaintiff's declaration, pages 8-9 of record.
Defendant's Special Demurrer, pages 10-11 of record.
Decision of the Supreme Court of the State of Illinois, pages 111-112-113 of record.

b. These issues were all raised, tried and decided in the trial court and the Supreme Court of the State of Illinois.

See decision of Supreme Court of Illinois, *supra.*

c. The chief question urged in the trial court and the Supreme Court was in relation to the ownership of the property taxed which question was decided upon a full hearing.

See decision of Supreme Court of Illinois, *supra.*

2nd. The question of the constitutionality of the statute under which the action was brought was only raised by formal assignment of error in the court below, and was not urged in the Supreme Court of Illinois by the defendant in error by argument or otherwise.

The decision of the Supreme Court of Illinois is as follows:

> "It is also said that the foregoing section of the statute under which the action is brought is unconstitutional, but no authorities are cited or

argument advanced in support of that assertion. The point, if it can be so considered, has therefore been waived."

Decision of the Supreme Court of Illinois, page 113.

3d. It is clear from the record that the writ of error in this cause was sued out for purposes of delay only.

See rule of this court as follows:

"There may be united with a motion to dismiss a writ of error or an appeal a motion to affirm on the ground that although the record may show that this court has jurisdiction it is manifest the writ or appeal was taken for delay only or the question on which the jurisdiction depends is so frivolous as not to need further argument."

The undersigned submit that no federal question is involved in this cause, and that the writ of error herein was sued out solely for purposes of delay.

It is therefore prayed that the said writ of error of the plaintiff in error be dismissed and the judgment of the Supreme Court of Illinois be affirmed.

Notice of this motion has been served on counsel for plaintiff in error and proof of service filed with the clerk of this court.

Respectfully submitted.

ROBERT S. ILES,
Attorney for Defendant in Error.

FILE COPY

Supreme Court of the United States.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1904.

No. 61.

GEORGE F. HARDING, *Plaintiff in Error,* *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, *Defendant in Error.*	Error to the Supreme Court of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

In this case the defendant in error filed its motion to dismiss the writ of error, and to affirm the judgment of the Supreme Court of Illinois, which motion is pending to be heard together with case upon the merits.

The question of constitutionality here sought to be raised by the plaintiff in error relates solely to the procedure in the state courts of Illinois, to wit:

(1) All question as to the constitutionality of the statute under which the action is brought is waived and abandoned in this court, and is not urged in the brief of the plaintiff in error, viz.: The plaintiff in

error presents thirteen points (pages 42 to 49 plaintiff's brief) upon which he relies, all of which relate to questions of procedure in the state courts, and no question is therein presented raising any question as to the constitutionality of the statute under which the action is brought.

See brief of plaintiff in error, pages 42 to 49, inclusive.

(2) No question of the constitutionality of either the statute or the procedure was raised in the assignment of errors to the trial court in the Supreme Court of Illinois, except by implication and indirection, viz., the only reference to such questions in said assignments of error must be implied from the following language:

"The finding and judgment of the court were erroneous for the several reasons stated in the points filed in support of the motion to set aside the finding and grant a new trial."

Clause 11, page 109 record.

The only portion of the motion for a new trial which relates to any question of constitutionality is found in clauses 25, 26 and 27 of motion, page 106 record, and reads as follows:

"25. The statute under which this action is prosecuted is contrary to the constitution of the State of Illinois."

"26. The statute under which this action is prosecuted is contrary to the Constitution of the United States."

"27. The proceeding under said statute is a taking of property without due process of law and otherwise unconstitutional."

(See motion for new trial, page 106 record.)

None of the above questions were urged in the Supreme Court of Illinois.

(See decision of Supreme Court of Illinois, page 113 record.)

All the questions here raised by the plaintiff in error as set out in his brief, relate to questions of pleading, practice and proof in the state courts of Illinois, and were presented and reviewed by the Supreme Court of Illinois, which court affirmed the judgment of the court below and are therefore fully settled, since no question of the constitutionality of any statute is involved.

The mere question of the sufficiency of the pleadings and proof or the relevancy of testimony when raised in a state court, are matters solely within the jurisdiction of the state court where no questions of the constitutionality under the Constitution of the United States are urged in the court of last resort in the state.

Counsel for defendant in error therefore respectfully submits:

(1) That there is no Federal question involved in the case at bar.

(2) That all questions of error as to pleading, practice and proof in this case have been adjudicated in the Supreme Court of Illinois, and that there is no question presented in the record to be reviewed by this Supreme Court, and that the writ of error of the plaintiff in error ought to be dismissed and the judgment of the Supreme Court of Illinois affirmed.

Respectfully submitted.

ROBERT S. ILES,

Attorney for Defendant in Error.

Supreme Court of the United States.

No. 61.—October Term, 1904.

George F. Harding, Plaintiff in Error, vs. The People of the State of Illinois. } In error to the Supreme Court of the State of Illinois.

[December 19, 1904.]

Mr. Justice Day delivered the opinion of the Court.

This case was submitted on briefs, together with motion to dismiss or affirm. In support of the motion to dismiss the position taken is that no Federal question was properly raised in the State court, and therefore none is reviewable here.

The case was commenced in the Circuit Court of Cook County, Illinois, to recover taxes for the years 1897–98–99 and 1900, on a block of land in the Elston Addition to the city of Chicago. At the trial a jury was waived and, upon hearing, a judgment was rendered in favor of the plaintiff for the sum of $2,123.05. An inspection of the record shows that the principal controversy was over the effect of a deed made by Harding, the plaintiff in error, to the Chicago Real Estate Loan and Trust Company, dated June 10, 1896, and recorded July 2 of the same year, which conveyed, for the consideration of five dollars, "all interest in the following described real estate, to wit: Any and all lands, of every kind and description, claimed or owned by me in the State of Illinois, and all lots and lands, of every description, in the city of Chicago, in which I have any right, title or interest whatsoever, situated in the State of Illinois," etc. It was the contention of the State that this deed was too general in its terms to convey specific property, and was therefore insufficient notice to the taxing officer of Cook County that the owership of the property had changed. The trial court admitted this deed in evidence subject to this objection. Upon appeal to the Supreme Court of Illinois, of this deed and other evidence in the case that court said:

"Conceding that the deed, if it stood alone, would overcome the *prima facie* case made by the plaintiff, the tax records of Cook County for the year 1898, offered in evidence by the people, tended to prove ownership in the defendant. The items in the tax warrant for the year 1897 on this property were charged to him and merged into a judgment. He appeared in the county court and objected to the validity of the tax, but the judgment was rendered against him as owner. This was subsequent to the date of the deed. His remedy as to that tax, if levied unjustly against him, was

by appeal. (*Biggins* v. *People*, 106 Ill. 270.) As to that tax he clearly could not, in this proceeding, attack the validity of the former judgment. Moreover, after the date of the deed he received the rents accruing from the property and deposited the money so received to his personal account. Notwithstanding the attempted explanation of that transaction, we think the clear weight of the evidence is that he continued, after the pretended conveyance, to deal with the premises as his own.

"In the light of all the evidence in the case it is very clear that the conveyance of June 10, 1896, was merely colorable, and not executed with the honest purpose of conveying the absolute ownership of the property to the grantee." (202 Ill. 122.)

Much of the elaborate brief of the counsel for plaintiff in error is devoted to a discussion of alleged errors of the Supreme Court of Illinois in deciding questions which it is alleged were not properly made or in failing to give due weight to matters of evidence in the record. This court has no general power to review or correct the decisions of the highest State court, and in cases of this character exercises a statutory jurisdiction to protect alleged violations, in State decisions, of certain rights arising under Federal authority. (*Laidly* v. *Land Co.*, 159 U. S. 103; *Marchant* v. *Pa. R. R. Co.*, 153 U. S. 380.)

The proceeding was brought under section 230, chapter 120, 3 Star. & Cur. Stat. of Illinois, 3501. This section provides:

"In any such suit or trial for forfeited taxes, the fact that real estate or personal property is assessed to a person, firm or corporation shall be *prima facie* evidence that such person, firm or corporation was the owner thereof, and liable for the taxes for the year or years for which the assessment was made, and such fact may be proved by the introduction in evidence of the proper assessment book or roll, or other competent proof."

It is the contention of the plaintiff in error in this court that this statute is unconstitutional, permitting assessment of those who may not be the owners of the property assessed, and consequently a violation of the protection guaranteed by the Fourteenth Amendment to the Constitution of the United States. The adverse holding in the State court upon this proposition is the decision upon a Federal right which, it is asserted, gives jurisdiction to review the judgment in this court. The motion to dismiss raises the question whether this objection was properly reserved in the State court. Upon the constitutionality of this act the Supreme Court of Illinois said:

"It is also said that the foregoing section of the statute, under which the action is brought, is unconstitutional, but no authorities are cited or argument advanced in support of that assertion. The point, if it can be so considered, has therefore been waived."

In the petition for allowance of a writ of error, and the assignment of errors in this court, it is alleged that the Supreme Court of the State erred in holding that the constitutional objection had been waived. And the

plaintiff in error appears to have put upon file here without leave the briefs and petition for rehearing below, in which it is insisted there is sufficient to show that the constitutional objection was not abandoned. But neither the petition for a rehearing or petition for writ of error in the State court after judgment, or assignments of error in this court, can supply deficiencies in the record of the State court, if any exist. (*Sherman* v. *Nebraska*, 116 U. S. 54.) Nor does the certification of the briefs by the clerk of the State Supreme Court, which are no part of the record, help the matter. (*Zadig* v. *Baldwin*, 166 U. S. 485.) We are to try the case upon the duly certified record, legally made in the State court, and upon which its decision rests. (*Powell* v. *Brunswick County*, 150 U. S. 433, 439.)

An examination of the record discloses that the assignment of errors in the Supreme Court of Illinois does not directly raise the point under consideration. It is referred to in the following language of the assignment of errors:

"The finding and judgment of the court were erroneous for the several reasons stated in the points filed in support of the motion to set aside the finding and grant a new trial."

If we may look to the motion filed in the trial court we find some thirty points assigned as grounds for a new trial. Those which may have application to Federal constitutional questions are found in paragraphs 26 and 27, which are:

"26. The statute under which this action is prosecuted is contrary to the Constitution of the United States.

"27. This proceeding under said statute is a taking of property without due process of law and otherwise unconstitutional."

The assertion that a judgment rests upon an unconstitutional State statute, the validity of which has been drawn in question and sustained, presents one of a class of cases which may be reviewed here. In the analysis of section 709 of the Revised Statutes of the United States, in *Columbia Water Power Co.* v. *Columbia Street Railway Co.*, (172 U. S. 475–488,) it was pointed out that cases of the character of the one now under consideration come within the second class of those provided for in the section: "Where is drawn in question the validity of a statute of, or an authority exercised under, any State on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity."

It has been frequently held that in cases coming within this class less particularity is required in asserting the Federal right than in cases in the third class, wherein a right, title, privilege or immunity is claimed under the United States, and the decision is against such right, title, privilege or immunity. In the latter class the statute requires such right or privilege to be "specially set up and claimed." Under the second class it may

be said to be the result of the rulings in this court that if the Federal question appears in the record in the State court and was decided, or the decision thereof was necessarily involved in the case, the fact that it was not specially set up will not preclude the right of review here. (*Columbia Water Power Co.* v. *Columbia Street Railway Co.*, 172 U. S. 475, and cases cited on p. 488.) Nevertheless, it is equally well settled that the right of review, dependent upon the adverse decision of a Federal question exists only in those cases wherein a decision of the question involved, was brought in some proper manner to the attention of the court and decided, or it appears that the judgment rendered could not have been given without deciding it. (*Fowler* v. *Lawson*, 164 U. S. 252; *Clark* v. *McDade*, 165 U. S. 168–172.) In one of the latest utterances of this court upon the question under consideration, *Capital City Dairy Co.* v. *Ohio*, (183 U. S. 238–248) Mr. Justice White, delivering the opinion of the court, said:

"It is well settled that this court, on error to a State court, cannot consider an alleged Federal question, when it appears that the Federal right thus relied upon had not been by adequate specification called to the attention of the State court and had not been by it considered, not being necessarily involved in the determination of the cause. (*Green Bay & Mississippi Canal Co.* v. *Patten Paper Co.*, 172 U. S. 67; *Oxley Stave Co.* v. *Butler Co.*, 166 U. S. 648, 654, 655, and cases cited.) Now, the only possible support to the claim that a Federal question on the subject under consideration was raised below was the general statement in the answer to which we have already adverted, that 'this proceeding is in violation of the Constitution of the United States." Nowhere does it appear that at any time was any specification made as to the particular clause of the Constitution relied upon to establish that the granting of relief by *quo warranto* would be repugnant to that Constitution, nor is there anything in the record which could give rise even to a remote inference that the mind of the State court was directed or considered this question. On the contrary, it is apparent from the record that such a contention was not raised in the State court. Thus, although at the request of the defendant below, the plaintiff in error here, the State court certified as to the existence of the Federal questions which had been called to its attention and which it had decided, no reference was made in the certificate to the claim of Federal right we are now considering."

The only authority called to the attention of this court by counsel for plaintiff in error as supporting the view that a Federal question was properly raised in this case is *Chicago, Burlington & Quincy R. R. Co.* v. *Chicago*, (166 U. S. 226,) in which case it was contended that a statute of the State of Illinois, under which condemnation proceedings were had, was in violation of the Fourteenth Amendment to the Constitution of the United States. In that case it was distinctly asserted, in the motion for a new trial in the trial court, that the statute and rulings of the court and the verdict and judgment based thereon were contrary to the Fourteenth Amendment, declaring that no State should deprive any person of life, liberty or

property without due process of law nor deny to any person within its limits the equal protection of the laws. In the assignment of errors in the Supreme Court of the State it was distinctly reasserted that these Federal rights had been denied by the proceedings in the trial court, and it was held in this court that while the Supreme Court of Illinois did not in its opinion expressly refer to the Federal constitutional rights asserted, the same were necessarily included in the judgment of the court and therefore the case was reviewable here. But how stands the present case? It is distinctly stated by the Supreme Court of Illinois, (whose judgment is alone reviewable here,) in the passage above quoted from its opinion, that no authorities were cited nor argument advanced in support of the assertion that the statute was unconstitutional, and that the point, if it could otherwise be considered, was deemed to be waived. If we look to the motion for a new trial, referred to in general terms in the assignment of errors when the case was taken to the Supreme Court of Illinois, we find the only reference to a Federal constitutional question to be in paragraphs 26 and 27, above quoted from the motion for new trial in the court of original jurisdiction. Paragraph 26 simply states that the statute is contrary to the Constitution of the United States, without calling attention to the provision of that instrument whose protection is denied to the plaintiff in error, and is clearly insufficient. (*Farney* v. *Towle*, 1 Black, 350.) Paragraph 27 alleges that the statute takes the property without due process of law, and is therefore unconstitutional. If this vague objection (§ 27) may be taken as asserting a claim of right under the Federal Constitution, yet in the Supreme Court of Illinois, so far as the record discloses, there was neither authority cited nor argument advanced in support of the constitutional objection. There is nothing to prevent a party from waiving a Federal right of this character if he choses to do so, either in express terms or as a necessary implication from his manner of proceeding in the cause. It is clear from the opinion cited that the State court based its decision upon other than Federal grounds and did not decide the constitutional question sought to be made here.

If the question was necessarily decided, notwithstanding the failure or refusal of the State court to expressly and in terms pass upon the matter, the case might be brought here. But in this case the State court expressly disclaims decision of the constitutional question, because it was not presented by proper proceedings. Our view of this record is that in so holding the State court did not err to the prejudice of the plaintiff in error.

Writ of error dismissed.